OMBUDSMAN

SASKATCHEWAN

OMBUDSMAN OF SASKATCHEWAN

SPECIAL REPORT ON

THE REGULATION OF FIC LTD. AND AIC LTD.

BY THE

SASKATCHEWAN SUPERINTENDENT OF INSURANCE

(THE PRINCIPAL INVESTIGATION)

Errata

Abbreviations
P. 1, line 4: "ICA The First Contracts Act" should read "ICA The Saskatchewan Investment Contracts Act".

Table of Contents
P. 1, line 3: "Jurisdiction ... 3" should read "Jurisdiction ... 2".

Chap.II
P.9, line 8: "covetion" should read "convention".

Chap.III
P.23, line 1 and 2: The first two lines on page 23, have been duplicated as they form part of the last sentence on page 22.

P.26, line 20: "comissioned" should read "commissioned".

P.29, line 20: issing" should read "issuing".

P.31, line 5: "mortgatge: should read "mortgage".

P.32, line 20: "identifed" should read "identified".

P.34, line 4: "affect" should read "effect".

P.35, line 15: "Saskachewan" should read "Saskatchewan".

P.35, line 18: "requirments" should read "requirements".

P.38, line 2: "Montelone's" should read "Monteleone's".

Chap.IV
P.44, line 20: "based" should read "was based".

P.46-47, Page 46 appears twice.

P.49, line 10: "licenced" should read "licensed".

Endnotes
P.63, line 13: OMbudsman" should read "Ombudsman".

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90-05230/

PREFACE

This report represents my findings and recommendations resulting from an investigation conducted by my office regarding the regulation of FIC Ltd. and AIC Ltd. by the Saskatchewan Superintendent of Insurance.

It has not been necessary for my office to conduct as extensive an investigation as has been conducted by either the British Columbia Ombudsman or the Alberta Ombudsman. Nevertheless, this investigation has involved a considerable amount of time and effort by members of my staff and I would like to express my appreciation for their dedication to this complex task and in particular to my Assistant in Saskatoon, Gil Thomson, who deserves the lion's share of any credit for this report.

ABBREVIATIONS

AIC	Associated Investors of Canada Ltd.
CDIC	Canadian Deposit Insurance Corporation
FIC	First Investors Corporation Ltd.
ICA	The First Contracts Act
PGL	Principal Group Ltd.

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Chapter I

Introduction

The Complaints

On June 29, 1987 the Saskatchewan government received notice from the Province of Alberta that the operating licences of First Investors Corporation Ltd. (FIC) and Associated Investors of Canada Ltd. (AIC) would be cancelled effective June 30, 1987. In consequence of this information the Saskatchewan Superintendent of Insurance, Mr. O. A. MacGillivray, suspended the licences which had been issued to the companies on December 31, 1986, on a renewal basis, under the provisions of The Saskatchewan Investment Contracts Act (ICA).

FIC and AIC, both subsidiaries of Principal Group Ltd. (PGL), were issuers of investment contracts, an investment vehicle which was not covered by the Canada Deposit Insurance Corporation (CDIC). However, the companies were subject to the requirements of the ICA, and following their collapse I received numerous complaints from investors who had little hope of any substantial recovery from the liquidation and distribution of company assets.

The common theme of the complaints was that the Saskatchewan Government had failed to take adequate steps to protect their interests. More particularly, they alleged the Superintendent of Insurance failed to properly administer the regulatory provisions of the legislation and by this failure allowed FIC/AIC to continue to solicit

and receive money from Saskatchewan people, although the companies were demonstrably insolvent and did not meet the licensing requirements of the Act.

Jurisdiction

In Saskatchewan, at the time the licences were suspended, the ICA was administered by the Department of Consumer and Commercial Affairs, with the Superintendent of Insurance having direct responsibility for enforcing its regulatory provisions.

My authority to investigate the investors' complaints is found at Section 12(1) of The Ombudsman Act, which stipulates:

> "12(1) It is the duty of the Ombudsman and he has power to investigate any decision or recommendation made, including any recommendation made to a minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by a department or agency of the government or by any officer, employee or member thereof in the exercise of any power, duty or function conferred or imposed on him by any Act whereby any person is or may be aggrieved."

and further to this, Section 20(1) requires that:

> "20(1) Before investigating any matter under this Act the Ombudsman shall notify the deputy minister of the department or the administrative or executive head of the agency of the government affected, as the case may be, of his intention to make the investigation."

The Department and the Office of the Superintendent of Insurance fall squarely within the Ombudsman's jurisdiction and on November 20, 1987 I forwarded notice to Deputy Minister, Ronald Kesslar, that I would be undertaking an investigation.

Scope of Investigation

Given the limitations of my authority, this investigation was necessarily restricted to the decisions and actions of government officials involved with the administration of the ICA. It focused on the regulation of FIC/AIC in determining whether or not the Superintendent of Insurance and, by extension, the Government of Saskatchewan, had fulfilled the obligations imposed on the Superintendent (and the government) by the ICA.

Other Reports

No enquiry was made into the activities of FIC/AIC personnel, nor into the acts and/or omissions of government regulators in Alberta or elsewhere. However, in considering the implications of the information gained from my investigation, I was fortunate in being able to refer to the reports of William Code, the Inspector appointed by the Alberta Court of Queen's Bench, of Alberta Ombudsman, Aleck Trawick, of British Columbia Ombudsman, Stephen Owen and of Lyman Robinson, Q.C., who was appointed by the British Columbia Minister of Finance to investigate allegations of misleading sales practices by the Principal Group of Companies.

The Code report provided a wealth of information about Principal Group operations and the involvement of the Alberta government regulators. From evidence given under oath, I have taken this information as providing an acceptably accurate picture of the status of FIC/AIC over the years, vis à vis the requirements of the Alberta ICA and of the Saskatchewan ICA. I took the same position with regard to the Alberta and British Columbia Ombudsman reports and I have utilized their information and findings in confirming my own view of the Saskatchewan government's performance as regulator of these investment contract companies. Mr. Robinson's report is an excellent review of the interaction between the investors and the companies, and his observations also provided confirmation of my views.

Publication of Report

Following upon my investigation I have furnished the Deputy Minister with a report of my findings and recommendation, a procedural requirement pursuant to Section 21(3) of my Act, which reads: -

> "21.(3) The Ombudsman is not required to hold a hearing and no person is entitled as of right to be heard by the Ombudsman but if at any time it appears to the Ombudsman that there are sufficient grounds for his making a report or recommendation in respect of any matter that may adversely affect any department, agency of the government or person, he shall give to that department, agency or person an opportunity to make representations in respect of the matter and the department, agency or person may make representations in respect of the matter by counsel."

However, The Ombudsman Act also provides, at Section 30(2)(b) that: -

> "30.(2) The Ombudsman may from time to time in the public interest or in the interest of any person, department or agency of the government publish reports relating:
>
> (b) to any particular case investigated by him;
>
> whether or not the matters to be dealt with in any such report have been the subject of a report to the Assembly."

The number of citizens of this Province who invested in FIC or AIC, the degree of damage inflicted upon those citizens through the collapse of the companies and the national exposure given to the whole affair, make this an eminently suitable case for a public report.

Chapter II

Reliance on the Primary Jurisdiction

Primary Jurisdiction Theory

I am aware that from the outset the position taken by the Saskatchewan government was that there was a tradition, even a national policy, of reliance on the primary jurisdiction - this being taken to mean the province in which a company's head office is located. It is said Saskatchewan relied on the Alberta Superintendent of Insurance to furnish information relevant to the performance of FIC/AIC and to their overall suitability for licensing under The Alberta Investment Contracts Act. The absence of adverse information was accepted as meaning there were no difficulties with the companies, such as to merit suspension or refusal of their licences in this province.

This position was stated and restated many times in the Legislative Assembly. For example, on September 11, 1987, the Honourable Mr. Gary Lane, then Minister of Finance said:

> "... the practice in Canada has been that the prime jurisdiction, that is the jurisdiction in which the financial institution is headquartered, is basically the governing jurisdiction, Mr. Speaker, and all provinces rely on the advice that we get from that so-called prime jurisdiction."[1]

On October 27, 1987, the Honourable Mrs. Joan Duncan, then Minister of Consumer and Commercial Affairs, said, also in the Assembly:

> "... when you're dealing with extra-provincially licensed companies, you have to rely on the incorporating jurisdiction to do the necessary regulatory work to see that things are on the up-and-up. We had absolutely no information prior to the end of June that these companies were in financial difficulty. These were companies that had been doing business in the province since 1954, who really have, over the years, been a benefit to the investors. An extra-provincially licensed company is always, has always been, and will continue to be the responsibility of the incorporating jurisdiction."[2]

While I am satisfied that the various Superintendents of Insurance believed there was an interprovincial information sharing convention, there was certainly no formal agreement and it was, at best, an arrangement of convenience. The idea does make sense because of the impracticality of several jurisdictions duplicating the work of the primary regulator but, addressing the notion of an arrangement, Alberta Ombudsman Aleck Trawick commented in his report on the Principal Group affair as follows:

> "The main argument that appears to be made by officials in other jurisdictions is that they implicitly relied, and were entitled to rely, on the Provnce of Alberta to regulate FIC and AIC pursuant to the ICA. Such interprovincial reliance would only be enforceable if it

were as a result of formal written agreement between the provinces concerned. No such agreement exists.

There is, however, a suggestion that there is a convention, or longstanding practice well known to all provinces, that reliance on the issuing jurisdiction is understood. I could not find, in my review of all of the actions of the Government of Alberta, including actions between it and any other government concerning investment contract companies, that there was any such covention o. indeed any real evidence of such reliance."[3]

Indeed, Mr. Trawick goes so far as to say that his recommendations for compensation (pre-empted by Premier Getty's announced offer) would only have included purchasers of investment contracts sold within the Province of Alberta; this because each province has its own regulatory statute. He writes:

"... other jurisdictions undoubtedly have responsibility to their own citizens for the governing of the sale of investment contracts within their own provinces, which may well supersede or at least contribute to the responsibility for losses regarding those transactions over and above any default by the regulatory system in Alberta."[4]

Conversely, from a reading of the report from British Columbia Ombudsman, Stephen Owen, it is evident that B.C. officials considered there was a national

policy (of sorts). However, Mr. Owen notes that past B.C. Superintendents Jewitt and Bullock agreed the policy did not relieve the Superintendent of his responsibilities for regulating investment contract companies and that:

> "... If it appeared that the primary jurisdiction was not doing an adequate job in obtaining information, then the secondary jurisdiction had a responsibility to ensure that it obtained, of its own accord, the information necessary to assess companies' compliance with statutory requirements."[5]

The Saskatchewan government certainly seems to have held a contrary view of the matter, but as for the primary jurisdiction convention being a concrete entity, consider the following exchange between M.L.A. Ralph Goodale and the Honourable Mrs. Duncan, on October 27, 1987:

> "**Mr. Goodale**: - Thank you, Mr. Chairman. I just have a few questions that I would like to address to the minister tonight and, if I could, I would like to go back specifically to the Principal Trust matter.
>
> The minister and other ministers in the House have constantly said, in respect of this matter, that they were entitled to rely upon the word and the advice of the incorporating jurisdiction and that being, in this case, the province of Alberta. And that has been essentially the total line of defence in terms of what went wrong with these

particular companies.

Madam Minister, could I just confirm this point. When you say that you are entitled to rely upon the advice that may come from the incorporating jurisdiction, are you required to rely upon that advice, or are you able to use your own provincial jurisdiction in the matter? Is it a permissive kind of policy or a mandatory kind of policy?

Hon. Mrs. Duncan : - It's your standard practice across Canada to rely on the incorporating jurisdiction to see that those regulations are upheld. It's the standard practice and has been the standard practice since time began.

Mr. Goodale: - Mr. Chairman, the minister says it is the standard practice. But could I have a precise answer to the very specific point.

While it may be the standard practice, there are occasions with respect to every practice where there are exceptions. I want to know very clearly, in the case of this practice are you required to rely upon the incorporating jurisdiction, or is it just a matter of you being entitled to rely on that jurisdiction if you wish to rely upon that jurisdiction?

Hon. Mrs. Duncan: - It's not a requirement, it's just ... As I said,

it's standard practice that has evolved over many, many years."[6]

A practice maybe, but if so, it received scant regard from Alberta. In adopting a position on the question of primary jurisdiction, I am drawn again to Mr. Owen's report, where he includes a comment from a senior inspector in the B.C. Investigations Department, as follows:

> "... The government has to have its own knowledge so that it can make a decision, whether it be to accept another jurisdiction's results or external auditors' results ... I think the public is under the perception that they are protected by this government. Not by another government."[7]

I am in complete agreement with this view. The Saskatchewan ICA identified specific duties and responsibilities, but made no reference to fulfilling these statutory obligations by reliance on another regulatory agency. I do not accept that the Saskatchewan Government can evade the issue of its own responsibility by merely citing reliance on an informal understanding and by seeking to lay the sole blame on the Alberta regulators.

The Investment Contracts Act

Although the ICA has now been repealed, the position I have taken on the amorphous information sharing arrangement in relation to the Superintendent's duties and responsibilities is strengthened by reference to the ICA as it was during the life of the Principal Group. In his Final Report Inspector William Code said of the Alberta Act.

> "... the scheme of the ICA is to regulate the sale of investment contracts through registration, filing and approval requirements and financial requirements.
>
> Selling investment contracts unless registered, using unauthorized sales material or selling investment contracts without the required reserves or asset values on deposit are offences under ... the Act.
>
> The purpose of the legislation is to protect investment contract holders. It is consumer protection legislation ..."[4]

The Saskatchewan ICA required that companies selling investment contracts be licensed, and that certain specific conditions had to be met to qualify a company for licensing. The Act also gave the Superintendent of Insurance the authority to issue, renew or refuse a licence at his discretion and called for filing with the Superintendent of annual and quarterly financial statements. The Superintendent also had the authority to suspend or cancel a licence in the public interest and

could demand such information as he felt necessary in relation to any application for a licence.

The ICA is reproduced in full as an Appendix to this report, but the following are the more significant sections:

> "Section 7.(1) No company shall be licensed under this Act as an issuer unless:
>
> (b) the company's unimpaired paid-in capital, paid-in surplus and earned surplus, or any one or more of them, amount in the aggregate to $200,000 or such lesser amount not less than $100,000 as the superintendent may approve;
>
> (c) subject to subsection (2), arrangements satisfactory to the superintendent have been made for the deposit with a trust company, chartered bank or other suitable depository within Canada of qualified assets aggregating in amount, when valued as provided in section 28, not less at any time than the amount for

which the company, under the terms of its investment contracts, is liable as of that time to pay in cash to the holders of all its investment contracts then outstanding, or aggregating such lesser amount as the superintendent may consider appropriate in the circumstances.

(2) In the case of a company that maintains with a trust company, chartered bank or other suitable depository or depositories outside Saskatchewan but within Canada a deposit or deposits of qualified assets in the aggregate amount specified in clause (c) of subsection (1) or other deposit satisfactory to the superintendent, no further deposit shall be required.

Section 20. Every licensed issuer shall, at all times:

(a) maintain reserves for the payment of its outstanding investment contracts that, together with all future payments to be received by the issuer on those investment contracts, or the portions of those future payments still to be

applied to reserves, and with accumulations of interest at an assumed rate not to exceed a rate approved by the superintendent, will attain the face or maturity value specified in the contracts when due, or the amount payable in accordance with the terms of the contracts; or

(b) maintain reserves of such lesser amount as the superintendent may consider appropriate in the circumstances;

but the reserves shall at no time be less than the amount for which the licensed issuer, under the terms of its investment contracts, is liable to pay in cash to the holders of all its investment contracts then outstanding."

These two sections together equate with the Section 8 requirements in the Alberta ICA, commonly referred to by the Alberta regulators as the Section 8 tests and the subject of much comment in the Code report.

The Section 7 conditions as to unimpaired paid-in capital, paid in surplus and earned surplus, and as to qualified assets on deposit in a Canadian trust company, chartered bank or other suitable depository, were mandatory requirements for being licensed in this Province and the reserve requirement in Section 20 was so worded as to also be a mandatory pre-condition for licensing.

It follows, therefore, that failure to meet these requirements at any time would have been sufficient reason to cancel or suspend a licence. At the least, it would merit vigorous enquiry of the primary regulator and/or the issuing company to satisfy the Superintendent of Insurance that licensing should, or should not, continue.

> "Section 25. Not later than thirty days after the expiration of each quarterly period ending March 31, June 30, September 30, and December 31 respectively every licensed issuer shall file with the superintendent a statement, certified by its auditor, showing:
>
> (a) the amount on the last day of the quarterly period required by section 20 to be maintained as reserves by the issuer on all outstanding investment contracts;

(b) all qualified assets on deposit on the last day of the quarterly period last ended with the trust company, chartered bank or other depository or depositories within Canada approved by the superintendent and the value, when valued as provided in section 28, of those qualified assets as at that date; and

(c) such other information as the superintendent may require.

Section 26. (1) Not later than ninety days after the expiration of its fiscal year, every licensed issuer shall file with the superintendent a balance sheet and profit and loss statement for such completed fiscal year, certified by two of its directors and reported on by its auditor, and such other financial statements as the superintendent may require.

Clearly, late filing or failure to file these statements would seriously limit the Superintendent's ability to assess whether or not a company met the requirements for licensing or renewal of a licence.

The ICA also set out specific directions as to the valuation of an issuer's assets (Section 28(1)). Much simplified, the general thrust of the section was to limit the value placed on stocks, bonds, debentures and other securities to no higher than the market value of such assets. First mortgages were to be valued "... in the amount of the balance of the principal sum secured thereby together with all unpaid interest accrued thereon ..." (s. 28(1)(b)), but such evaluation could be illusory if the mortgages were in default, as was the case with a substantial percentage of the mortgages held by FIC/AIC. Section 28(3) permitted the Superintendent to secure an appraisal where it was felt the "... amount secured by mortgage on a parcel of real estate, together with interest due and accrued thereon, is greater than the value of the parcel, or that the parcel is not sufficient for the loan and interest ...". If the appraisal found the parcel was not adequate security for the loan and interest, the Superintendent could utilize the appraised value in his assessment of the issuing company's financial status.

There is no doubt, therefore, that the ICA did provide clear directions for both the Superintendent and the issuer as to what was required to qualify for licensing as an investment contracts issuer.

Equally important (if not more so) from the public's perspective, the ICA imposed a clear obligation on the Superintendent of Insurance to satisfy himself that the applicants for a licence were suitable, and to investigate their suitability before issuing or renewing a licence. Section 12 provided:

> "12. The superintendent may grant a licence or renewal of a licence if he is satisifed that the applicant is suitable to be licensed and the proposed licensing is not for any reason objectionable, but if the superintendent after investigation is for any reason of the opinion that the applicant should not be granted a licence he may refuse the application."

In my opinion this was the most crucial section in the Act. The companies could not operate in the Province unless licensed by the Superintendent and, while the protection provisions were important, it required the action of the Superintendent to give effect to the protection envisaged by the legislators.

Chapter III

Regulation by Government Officials

Departmental Involvement

From an historical perspective departmental records show that after initial registration under The Companies Act, both FIC and AIC were licensed under The Investment Contracts Act from 1956 to 1965. Then, following a period during which they operated as trust fund companies, AIC was reinstated as an investment contract company from May 12, 1978 and FIC was reinstated effective April 27, 1981. Previously administered by the Provincial Secretary, The Investment Contracts Act became the responsibility of Consumer and Commercial Affairs in 1981, and the administrative procedures respecting the filing of financial and other reports, in practice with the Department of the Provincial Secretary, were continued without change. Following notice on June 29, 1987, that Alberta was cancelling the FIC/AIC licences effective June 30, 1987, the Saskatchewan Superintendent of Insurance suspended their licenses on July 2, 1987.

On reviewing the Superintendent's files, it is noticeable that the record is virtually silent as to the period between 1978 - 1987 for AIC, and 1981 - 1987 for FIC, except to show that their licenses were renewed annually. At no time did either company operate without being licensed, but this would only be significant if the licence was actual confirmation that the licensing requirements had been met. As it happened, the licences were issued solely on an assumption that the companies were suitable for licensing.

Also, in the Superintendent's files on these companies there is nothing to show that any annual reports were submitted prior to 1984 (when the 1983 reports were received) and it is inconceivable that any analysis of compliance could be made without these documents. Yet the renewal licences were "automatically" issued each year.

As with the annual reports, so too with the quarterly reports, required by Section 25 of the ICA; the files are devoid of any reports prior to 1983 and following receipt of the quarterly statements for the period ending March 31, 1983, the December reports for both companies are missing for 1983, '84 and '85. As well, the June 30, 1985 report from FIC and the March 31 and June 30, 1985 reports from AIC are not on file. Several of the reports that were received were late and none of the quarterly reports received were certified by an auditor, as required by Section 25, nor were they reviewed to ensure that reserves and qualified assets satisfied the requirements of the Act.

The Superintendent at the material time, Mr. Earl Saunderson, was unable to say whether the absence of any annual or quarterly reports meant they had not been submitted by the companies or whether they had been misfiled or placed in storage. However, the FIC/AIC files contain documents and correspondence from the 1960s as well as reports from both companies during the years they operated as trust fund companies. Lacking information to the contrary, I can only assume the missing reports were not received and that there was no follow-up from the Superintendent's office.

the missing reports were not received and that there was no follow-up from the Superintendent's office.

It is a fact, however, that the Superintendent did receive the annual financial statements for 1983, '84 & '85, and most of the quarterly statements from 1983 on. Since the licence year corresponded to the companies' fiscal year, the licences for 1985, '86 and '87 were necessarily (theoretically) based on the annual financial statements for 1983, '84 and '85. But former Deputy Superintendent John Page (March 1984 to August 31, 1989) frankly admitted that these reports, although received, were not examined but merely filed, and the essential basis for relicensing was the absence of any information from Alberta about FIC/AIC, adverse or otherwise. It was obviously accepted by Mr. Page, and unknowingly by Mr. O. A. MacGillivray, the present Superintendent (from May 1984), that no news was good news. There is no evidence of any follow-up as regards missing or late reports, annual or quarterly, and this shows a complete disregard of sections 25 and 26 of the ICA by the Saskatchewan regulators. (But of what significance are missing reports when those received were not read anyway?)

Given that the Superintendent of Insurance issues hundreds of licences each year, he naturally assumes that the documents are correct in all respects. The task of ensuring this is so is necessarily delegated to subordinates, and Mr. MacGillivray stated this would have been the responsibility of his Deputy Superintendent. The annual licences indicated that FIC and/or AIC, "... having complied with the requirements of The Investment Contracts Act, is hereby licensed as an ISSUER,

subject to the provision of the said Act until ..." and Mr. MacGillivray advised he was never given any reason to believe the companies had not complied with the requirements.

Likewise, during the years preceding 1983, Mr. Saunderson relied on his subordinates to examine any reports from these companies and the signing of the licences was a mere formality, providing the fee was submitted and in the absence of negative comment, from his own staff and/or from Alberta. In terms of processing the licences, the practice was to have them preprinted with the Superintendent's signature thereon and the company's name and date of issue would be typed in by clerical staff following approval of the issue by the Deputy Superintendent. This "historical" process (obviously a work-saving measure) doubtless encouraged the view, if indeed there was any consideration of the matter, that the annual re-licensing was a routine process of minimal consequence.

Certain it is, I submit, that FIC/AIC received scant attention from the Saskatchewan regulators following their relicensing as investment contract companies in 1978 and 1981. They were largely ignored, except as regards the licensing of sales persons and, either by design or default, complete reliance was had on the regulatory activities of the primary jurisdiction.

Further evidence of the attitude towards these companies is the lack of any response or action (so far as the file is concerned) to a memorandum from investigator W. Parsons addressed to Mr. Saunderson, dated June 16, 1980. Mr. Parsons wrote:

> "Hal Crossley was in on July 11th to enquire about licensing under The Investment Contracts Act to represent Associated Investors of Canada Ltd. He left us the enclosed application form and brochure. He says that a customer gets a copy of the application form and that is all. This concerns me.
>
> A search of our file indicates we have no security called a "Term Certificate" or an Additional Credit Term Certificate".
>
> A reading of the application form and brochure states that "assets equal to one hundred percent of certificate liabilities are maintained on deposit with a government approved custodian ... etc.". If this means that the assets are on a deposit with Principal Savings and Trust Company, a trust company that is not at arms length with Associated Investors of Canada Ltd. then this statement is very misleading. It seems to me that this company is either selling an investment contract or not. If the "term certificate" or "additional credit term certificate" are investment contracts, then copies are to be filed here.

In view of the Astra and Re-Mor situation in Ontario we must be careful that the same situation is not developing here."

Mr. Parsons advised he was not aware of any action being taken further to his memo and indeed, there is no clear evidence that it ever reached Mr. Saunderson. The Deputy was the person who dealt with such out-of-province companies and, considering the office's history of reliance on Alberta, I can only assume the memo was filed without any inquiry being done. The then Acting Deputy Superintendent has long since left this province and has not been interviewed.

While I can understand, though not condone, the lack of attention given FIC/AIC, it is especially unfortunate that no thought was given, so far as I can determine, to the difficulties experienced with these companies in the mid-sixties. Although events in 1965 could not have justified a refusal to re-licence in 1978 and 1981, the history of FIC/AIC at that time should have given cause for careful scrutiny of their eligibility for reinstatement under the Investment Contracts Act and careful monitoring thereafter.

Following an examination of AIC financial statements as at December 31, 1964, Mr. J. O. Darwish, an auditor with the Alberta Securities Commission, reported his concerns to Commission Chairman, Harry Rose on October 25, 1965. Mr. Rose forwarded a copy of Darwish's report to Mr. L. J. Beaudry, then Deputy Provincial Secretary of Saskatchewan and Mr. Beaudry comissioned an examination of both

FIC and AIC by the accounting firm of Peat, Marwick and Mitchell.

These examinations identified capital impairment, over-valuation of assets, improper inter-company transfers and excessive dividends and management fees. In large measure the concerns were very similar to those identified in the early 1980s. As it happened, any likely action against the companies was forestalled as their licences lapsed on December 31, 1965 and were not renewed. Instead, they were licensed as trust fund companies under The Companies Licensing and Inspection Act and could not legally sell further investment contracts in Saskatchewan, although they could service existing contracts.

The point of mentioning this little bit of history is to suggest that a review of the department's files prior to licensing in 1978 (and 1981) should have taken notice of the very serious problems which were under review in 1965/66. At the least, the various reports made at that time should have meant very close monitoring of their activities and of their financial status - preferably on a quarterly basis. It is conceivable that a full review of the companies might have led to a refusal to relicense them at all, particularly FIC in 1981, as Alberta's examination of the 1980 financial statements showed capital impairment and insufficient qualified assets on deposit in Canada, both mandatory requirements under Section 7 of our ICA.[9]

It is perhaps ironic that Mr. Saunderson, the Superintendent under whose authority FIC/AIC were relicensed in 1978 and 1981, was the official who examined both

companies in some depth following the 1966 Peat, Marwick and Mitchell report. Evidently the quiet period in Saskatchewan, while FIC and AIC were operating under The Companies Inspection and Licensing Act and later The Trust and Loan Companies Licensing Act, lulled our regulators into believing there was little wrong with the companies and certainly no impediment to reinstatement as investment contract issuers.

No news was good news. But was it? Evidence was produced at the Code Inquiry that Ernst & Ernst and Robert Black, Q.C., examined both companies in 1974. Their reports indicated deficiencies in qualified assets of approximately $1 million for AIC and $2.2 million for FIC. This examination led to a further review by Shortreed and Gardner, a lawyer and an accountant, who reported in December 1974 that both companies failed to meet the mandatory Section 8 tests under the Alberta ICA. Mr. Code notes:

> "They were also concerned that the companies had deliberately invested in assets which were neither qualified nor permitted and that certain intercorporate transactions were potentially prejudicial to the investment contract holders. Shortreed and Gardner made a number of recommendations for action and suggested a timetable for compliance by the companies".[15]

So all was not right and it seems reasonable to suggest that any regulator, armed with information about the continuing difficulties with FIC/AIC, after they had

relinquished their investment contract operations in Saskatchewan and throughout the late sixties and seventies (difficulties which mirrored the problems of 1965/66), might not have relicensed them in this Province; which would have saved Saskatchewan people millions of dollars.

However, information was neither received nor sought. Proper regulation of these companies, as envisaged by the ICA, fell victim to a ready acceptance of the primary jurisdiction theory occasioned by the traditional low profile given such out-of-province companies and, doubtless, by the ever-heavy work load of the Superintendent's office. The errors made were errors of omission, not necessarily wilful, but no less damaging.

As noted above, Section 12 of the ICA gives the Superintendent the discretion to issue a licence where an applicant is suitable and the proposed licensing would not be objectionable, or to refuse a licence if he is of the opinion the applicant should not be granted a licence.

In my view the key element in deciding on an application for a licence is that the Superintendent be satisfied the applicant is suitable. Thus, while the Superintendent has a discretion to issue a licence or not, he has no discretion as regards his satisfaction that the applicant is suitable. The Act does not say that the Superintendent may be satisfied. There is a clear presumption that he must be satisfied on the point of suitability before issing or renewing a licence.

Further to this, I am of the view that the section also presumes that before granting or refusing a licence an investigation of the application must occur prior to any decision being made.

In order to properly exercise the discretion to issue or refuse a licence, the Superintendent must perform an investigation and fulfill the "duty" of being satisfied that an applicant is suitable to be licensed.

In Saskatchewan, the FIC/AIC annual financial statements were merely filed and the absence of any information from Alberta, adverse or otherwise, was the basis for renewing the licences for 1987, but Mr. Page gave me to understand that these reports were not even read. How then, could they be the basis for renewal?

A reading of the 1985 financial statements for FIC/AIC must have given cause for concern, with their clear qualification as to the valuation of mortgages and owned property which suggested an increase in net loss and deficit for the year of $9,833,069 for FIC and $1,751,613 for AIC. Although not absolute proof of insolvency, such capital deficits, together, with the auditor's qualifications, are a fair indicator of financial difficulty. For a secondary regulator, the statements cry out for enquiry of the primary regulator. Whether or not anything worthwhile might have been learned from Alberta is a moot point; if the Saskatchewan regulators thought anything, they would likely have expected solid information, since they were apparently satisfied that Alberta was meeting its responsibilities as the prime

regulator.

The same can be said of the 1983 annual statements, which were presented by the auditors on a "going concern" basis, and of the 1984 statements which identified that FIC had appropriated $10,190,000 from retained earnings to cover the decline in mortgatge and real estate values, albeit the retained earnings available were only $2,989,384.

As another example of the problems hinted at in the annual reports, consider what was revealed by the Alberta examination of FIC/AIC'S 1983 statements. Alberta Ombudsman, Aleck Trawick, writes in his report on the Principal Affair:

> "On August 13, 1984, Hutchison reported on his annual examination of the financial statements of FIC and AIC for the year ending December 31, 1983. Contrary to what had been promised by Marlin in early meetings, the results showed a very substantial deterioration. Hutchison commented regarding FIC, that under the section 8 tests, the deficit in unimpaired capital was $62.5 million at December 31, 1983, and $80.1 million at April 30, 1984. The deficiency in qualified assets was $107.2 million on December 31, 1983 and $130.5 million on April 30, 1984. The deficiency in certificate reserves was $59.8 million on December 31, 1983, and $75.8 million on April 30, 1984.

The borrowing to capital ratio on December 31, 1983, was 250:1. On April 30, 1984, it had deteriorated to 376:1. For the first time, a breakup value calculation assuming an insolvency was determined. The breakup value calculation at December 31, 1983, was a deficit of $55.1 million. As of April 30, 1984, it was $73.5 million. 77% of the FIC mortgages were in arrears. FIC had done nothing to correct the deficiences pointed out in Saleh's May 11, 1984 letter. Additional information had been requested from them and was not forthcoming. He concluded that FIC was virtually insolvent, and was depending on new customers to pay off the old. He indicated the company was reluctant to put up additional capital, did not follow the directions from the Superintendent of Insurance, and participated in non-arm's length prejudicial transactions. He stated the company would require a 25% return on its producing assets in order to break even. He noted that as of April 30, 1984, it had capitalized $22.5 million in interest arrears. He pointed out that cooperation from the company management was poor, and the audited financial statements had been filed late.

The figures for AIC were equally as bad. The shortage in unimpaired capital was identifed as being $24,800,000 as at December 31, 1983, and $24,097,000 as at April 30, 1984. Qualified assets on deposit were deficient in the amount of $33,674,000 on December 31, 1983 and $33,034,000 on April 30, 1984. Reserves were deficient in the amount of $21,308,000 as at December 31, 1983, and $21,397,000 as at April 30, 1984. The borrowing to

> capital ratio at December 31, 1983, was 94:1, and as at April 30, 1984, was 115:1. The breakup value calculation as at December 31, 1983, was a deficit of $19,967,000. As of April 30, 1984, that deficit had increased to $21,406,000. 70% of AIC's mortgages were in arrears and not producing." [11]

Clearly, the "going concern" basis on which Touche Ross & Co. presented the 1983 financial statements was fully justified.

To be brief, I will only say additionally that the companies' situation continued to worsen. Following submission of the 1985 financial statements, the Alberta auditors concluded both FIC and AIC had sustained substantial losses and failed to meet any of the Section 8 conditions in the Alberta ICA.[12] This meant, of course, that they were also in breach of the requirements of our own ICA.

The Saskatchewan files (which were in considerable disarray when my investigator first saw them on December 16, 1987 - several annual reports and renewal licences were missing, though some were later found) show no consideration of any of these disturbing annual statements, but it is difficult to comment on something that has not been read. However, both the Code report and the Alberta Ombudsman's report indicate great concern on the part of Alberta's departmental auditors, and the British Columbia regulators also had grave concerns about what was happening with these companies.

Certain it is that any of the 1983/84/85 reports would have sounded warning bells in the head of any accountant/auditor and, of course, it is now recognized that the companies were literally insolvent by 1984.

The net affect of the Saskatchewan practice of blind faith reliance on Alberta was that licences were renewed year by year without the Superintendent(s) being even remotely aware of whether or not FIC/AIC met the mandatory requirements of the ICA. In consequence the companies were permitted to use the fact of being licensed as a selling tool. Information from investors indicates that the Principal salespeople strongly emphasized the requirements that the companies have appropriate qualified assets on deposit with a chartered bank or trust company in Canada and must maintain reserves sufficient to cover all outstanding investment contracts.

I am aware that licensing by the government was not an endorsement of these investment contracts as an investment vehicle. However, it was essentially a statement by the Superintendent that the companies had met the statutory conditions in Sections 7 and 20 of the ICA, conditions which were designed to provide basic protection to purchasers of the contracts. Since the Act required no disclosure to the public by the companies - such as the prospectus required by The Securities Act - the investors were obliged to rely on the Superintendent.

In this regard it is interesting to note the comment made by Deputy Provincial Secretary L. J. Beaudry, in answering a query from Mr. R. Humphreys, Superintendent of Insurance, Ottawa, about investment contract companies.

Mr. Beaudry wrote, on July 29, 1966 -

> "There are no prospectus requirements and, in my opinion, there should not be any. An investment contract should be as sound as an insurance policy or a guaranteed investment certificate of a trust company. We regard investment contracts as a saving plan and not a speculation. The element of risk should therefore be reduced to a minimum by adequate supervision and legislation so that a prospectus is not necessary."
>
> (my emphasis)

And further, on May 30, 1967, Provincial Secretary Darrel Heald wrote to Morris Chernesky, a Saskatoon lawyer -

> "Investment contract companies licensed in Saskachewan are, however, subject to the provisions of The Investment Contracts Act which is administered by the Superintendent of Insurance. This Act sets out certain minimum requirments for the protection of the investing public."

It seems to me that in passing the ICA, and in not requiring disclosure to the public by way of a prospectus, the provincial government is saying to the consumer - we will protect you by satisfying ourselves that investment contract companies meet certain basic requirements before they are licensed to sell to you.

To add to this point, it should be noted that the ICA does not require investment contract companies to provide annual financial statements to investors or prospective investors or to disclose details of their investment portfolios. It is clear from the various inquiries to date that many investors were concerned about the state of the Alberta real estate market when contemplating where to invest their money, and the constant refrain from the Principal salesmen was that Cormie had been smart enough to move out of that market. Without ready access to information about Principal's holdings, potential investors were obliged to take the salesmen at their word. One of our complainants was told only about 7% of their assets (FIC/AIC) were in real estate and mortgages, when the real figure was in excess of 30%.

The fact is that potential investors had little opportunity to check up on the security of their investment and even when they inquired beyond their local sales consultant they were fed the same type of misinformation.

For example, one man, having invested substantially in Principal investment contracts on November 3, 1986, received the following response to queries

addressed to Principal's South Prairie Area Manager, Mr. Barry Monteleone:

"As per your discussion with Mr. Mang, our representative from our Moose Jaw Office, please find enclosed The Investment Contracts Act, which will provide you with additional information. Our Associated Investors of Canada Ltd. and First Investors Corporation Ltd. Term Certificate Companies are registered under The Investment Contract Act. Therefore, our company is required to maintain assets equal to the liabilities of the holders of the certificates. Which means to you that 100% of the term certificate is held by assets with a Canadian Chartered Bank.

For example, if you have invested $10,000.00 with our company, we must set aside $10,000.00 in assets plus 4% of the interest. The advantage of this is that you can put any amount you wish with our two term certificate companies and you are 100% backed for the original deposit. The other advantage is that there is no maximum limit for these investments. This does have a definite advantage over the CDIC (Canada Deposit Insurance Corporation) as they only cover up to a maximum of $60,000.00.

Please also find enclosed our 1985 Annual Report, which will provide you with an idea of Principal's financial situation. Our group assets under management exceed $1 billion at the end of 1985. I hope that this will answer your questions in regards to the security of Principal Group Ltd. Should you have any further questions, please

do not hesitate to contact your representative Mr. Mang."

Mr. Montelone's letter leaves the impression that FIC/AIC did indeed have assets on deposit equal to their liabilities to the certificate holders. Since the companies were licenced by the government, the mere stating of the deposit requirement is sufficient to reassure the public that the companies are sound. Also, the fact of being licensed allowed FIC/AIC to use the CDIC limit of $60,000 coverage as a point in favour of their investment contracts. They were successful in putting this across to the investors because these were not speculators, but savers, whose prime concern was the financial stability of the companies, rather than making high returns from (hopefully upward) fluctuations in stock market prices.

The reference to the 1985 Annual Report is incorrect. This investor actually received the 1985 Annual Review which presented an advantageously worded overview of company operations but failed to disclose the degree of holdings in real estate and mortgages.[13] It's interesting to note that this investor is an accountant who would certainly have recognized the significance of the 1985 Annual Report, both as to the Auditor's qualification as well as regards the extent of mortgage and real estate holdings. But what satisfied him, as much as he could be satisfied, was the fact of licensing under the ICA.

Chapter IV

Analysis of Government Regulation

Findings

The Saskatchewan government's initial reaction to the collapse of FIC/AIC was to deny responsibility. The record of debates and proceedings in the Legislative Assembly abounds with references to reliance on the primary jurisdiction and to the lack of any information from Alberta as to their concerns about FIC/AIC. Whether one accepts the concept of primary jurisdiction responsibility or not, one would have to suppose there was such reliance on the part of the Saskatchewan regulators because, apart from a flurry of activity in 1965/66, nothing was done in the way of regulating the operations of the companies in this province.

"We relied on Alberta and we had no information about troubles with the companies" is a constant government refrain in the reports from the Assembly. Well, we can't argue the reliance on Alberta, although it was a blind reliance, without any awareness of even the status reported by FIC/AIC themselves, in their 1983-85 annual statements. However, to say the government had no information is not correct. It may not have had information that would prompt immediate suspension or cancellation of their licences. I accept that these last three statements show cause for concern - even grave concern - but a functionary such as the Superintendent of Insurance, albeit his is an important administrative position, can scarcely be expected to take such drastic action against a major financial company without first pursuing, with the primary regulator or the company, or both,

the reasons for his concern.

There is no doubt, however, that the information in the annual statements was sufficient to give any prudent regulator cause for concern, and the failure of the Saskatchewan Superintendents and their officials to even read the statements can only be seen as a complete abrogation of the responsibility imposed by the ICA.

The same criticism might be appropriate if they had read the statements and had failed to take appropriate action to confirm or alleviate the concerns. One could at least address the question of the judgement exercised in administering the Act; but to do nothing at all is an unconscionable dereliction of duty.

To me, it is immaterial to argue that none of the reports would have, alone, justified refusal of a licence, or that enquiry of Alberta would not have supplied adequate information on which to base such a refusal - because Alberta was deliberately trying to cover-up the real state of affairs with FIC/AIC. That would be speculation, and it could be equally argued that a responsible regulator would be cognizant of the poor past history of the two companies and display some persistence in trying to clarify the picture of their financial health before allowing them to continue taking substantial sums from Saskatchewan investors.

On September 14, 1987, the Honourable Gary Lane claimed in the Assembly

that the 1985 financial statements did not show insolvency, although they did show a picture at a particular time, and he went on to say, "... that you're entitled - and I think it's necessary - to have further information from the prime jurisdiction which would tend to indicate if there was a problem ...". To a supplementary question he replied, in part, "... I gather in the financial statements ... you get a difference of opinion from the auditors as to whether the assets are properly valued."[14] What the minister seems to be saying, and I would agree with him, is that where there may be a problem or a dispute, such as a dispute over asset valuation, enquiry should be made of the prime jurisdiction.

But despite the serious questions raised by all three of the 1983 - 85 annual statements, no enquiry was made because no one was aware of the statements. Thus, the 1987 licences were not issued on the basis of the 1985 statements. They were issued on an assumption that no news was good news, and the same can be said of all the licences issued since 1978 (and likely of the licences previously issued up to 1965).

Hindsight is wonderful, and it seems clear now that FIC/AIC sought reinstatement as investment contract dealers in Saskatchewan because they were desperate for new money to help pay current indebtedness, but Saskatchewan played right into their hands by reason of the total lack of any control over the licensing process.

The government's obligations are set out clearly in the ICA and there is nothing in the Act or elsewhere that limits those obligations. Reliance on the primary jurisdiction may be a mechanism for meeting the obligations, but such reliance by itself, does not fulfill the obligations.

The duties and responsibilities are clear and it is equally clear that they were not met. I therefore have no hesitation in finding the investors' complaints substantiated.

Consideration Re: Compensation

Having found the complaints substantiated, I turn now to the questions of provincial government responsibility to the investors and compensation for the losses incurred.

As regards findings and recommendations, The Ombudsman Act provides, at Section 24:

> "24 (1) Where, after making an investigation under this Act, the Ombudsman is of the opinion:
>
> (a) that a decision, recommendation, act or omission that is the subject matter of the investigation appears to have been:

(i) contrary to law;

(ii) unreasonable, unjust, oppressive, improperly discriminatory or was in accordance with a rule of law, a provision of an Act, or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory;

(iii) based in whole or in part on a mistake of law or fact; or

(iv) wrong:

(b) that in making a decision or recommendation, or in doing or omitting an act, a power or right has been exercised:

(i) for an improper purpose;

(ii) on irrelevant grounds; or

(iii) on the taking into account of irrelevant considerations;

or

(c) that reasons should have been given for a decision, recommendation, act or omission that was the subject matter of the investigation;

the Ombudsman shall report his opinion and his reasons therefor to the appropriate minister and to the department or agency of the government concerned and may make such recommendations as he thinks fit.

(2) Without limiting the generality of subsection (1), in making a report under that subsection the Ombudsman may recommend:

(a) that a matter should be referred to the appropriate authority for further consideration;

(b) that an omission should be rectified;

(c) that a decision should be cancelled or varied;

(d) that any practice on which a decision, recommendation, act or omission based should be altered or reviewed;

(e) that any law on which a decision, recommendation, act or omission was based should be reconsidered;

(f) that reasons should be given for any decision, recommendation, act or omission; or

(g) that any other steps should be taken."

Pursuant to Section 24, the Ombudsman can make such findings and recommendations as he thinks fit and he need not necessarily consider the niceties of strictly legal liability.

In this case the question of liability is certainly contentious. I note that Inspector Code feels,"... a private law duty may very well be owed by the person responsible for the due administration of the ICA to investment contract purchasers."[15], and I concur with this view. Additionally, the Alberta Ombudsman expressed the opinion that the provisions of the ICA created , "a sufficiently close relationship between investment contract holders and government regulators that those regulators should have known that their failure could contribute to the damage caused to the investment contract holders."[16] Mr. Trawick continues:

"Specifically, the ICA gives the Superintendent of Insurance the specific approval of compliance with specific Capital, Deposit and Reserve Tests under section 8; the right to conduct evaluations and enforce change in the value of assets used to meet those tests, under section 29; the right to approve the reserve rate used in calculation of some of those tests, under section 29; the right to approve the reserve rate used in calculation of some of those tests, under section 30; and the duty to accept and approve for use all brochures and contracts used by investment contract companies, under sections 24 and 25. Those powers, in my view, are sufficient to support a conclusion that the ICA creates a general duty to purchasers from investment contract companies. In my opinion, there are no considerations which ought to limit or negate the scope of that general duty."[17]

By passing the ICA, the government put itself directly between the public and the companies. Disclosure of their financial status was to the government, not to potential investors, and the ICA made no provision for public access to the information given by the companies to the government. The government's position, as given by Mr. Beaudry (page 35 supra) has been that disclosure to the public, as by a prospectus, was not necessary. In any circumstances, failure to ensure the requirements had been met would put investors at risk - with FIC/AIC, it essentially gave them a licence to prey upon the Saskatchewan public in a desperate attempt to shore up Cormie's crumbling empire.

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Superintendent MacGillivray unknowingly inherited a history of negative administration, as regards the investment contract companies. Understandably, he relied on Deputy Superintendent Page in the matter of compliance with licensing requirements, but Mr. Page, in his turn, had adopted the priorities of his predecessor(s), and Mr. MacGillivray unwittingly failed to ensure the proper regulation of FIC/AIC. Consequently, by extension, the Department of Consumer and Commercial Affairs and the Government of Saskatchewan failed the investors the Act was designed to protect. The ultimate responsibility rests with the government and it is to the government that the investors are looking for reparation.

Now I assume that the Saskatchewan government would like to place the entire blame on the Alberta government for its clear dereliction of duty in administering the Alberta ICA. As previously noted, however, the Saskatchewan ICA stands alone as the regulatory instrument in this province. There is nothing in the Act to qualify or otherwise limit the responsibility conferred on the Superintendent. Also, as previously stated, blind reliance on another jurisdiction, as a matter of convenience, does not diminish the Saskatchewan government's obligation to ensure that companies being licensed met the statutory criteria.

There is no doubt the Alberta government was largely responsible for exposing investors to FIC/AIC by continually licensing them in the face of insolvency and ineligibility under their ICA. Whether or not the Saskatchewan government pursues Alberta (to recover compensation paid to Saskatchewan investors) is a matter for

the government to decide, but the possibility of investors suing either the Saskatchewan or Alberta governments is remote, given the time and legal costs that could be anticipated. It is a fact that the companies were only able to sell in Saskatchewan because the Superintendent here issued them licences and the investors should not have to contemplate legal action to right the wrong done to them. There is no doubt in my mind that the Saskatchewan government utterly failed the people of Saskatchewan who invested in FIC/AIC, mostly people who saw their investment contracts as a form of savings plan, and who had accepted (why shouldn't they?) that the ICA licensing showed them to be stable, solid companies, consistently licenced by the government over a period of years.

In considering the history of FIC/AIC performance over the years, I feel confident in saying that these companies probably seldom, if ever, met the full requirements of the ICA. We do not have the records for the 1950s, but the state of their affairs in the mid-sixties (which was brought to Saskatchewan's attention by the Alberta Securities Commission) was such as to suggest they had been skating around the legislation for years. The irregularities noted by Mr. Darwish in 1965 did not arise overnight, but Saskatchewan never faltered in issuing the annual licences to both companies. And certainly, in retrospect, they were very poor candidates for re-licensing in 1978 and 1981.

It is important that an Ombudsman be objective in his assessment and findings in any investigation, and that his reports are not viewed as ammunition for the political arena. As Ombudsman I am concerned with administrative fairness, not politics,

and I feel it is only proper to state that the Saskatchewan investors were poorly served by the appointed government regulators over the entire span of FIC/AIC operations in this province.

I cannot say, however, that the government neglect was wilful. In my view, the out-of-province investment contract companies were unfortunately relegated to the bottom of the regulatory heap and the significance of allowing FIC/AIC to operate in Saskatchewan under presumed control by Alberta was overlooked when, in fact, these companies should have been closely scrutinized in light of the amount of money being invested by Saskatchewan residents.

As to that, information in the Superintendent's files indicated approximately 7,000 investors held some 8,466 contracts with FIC/AIC to a value of $48,517,755, as at October 31, 1988.

In consequence, any recommendation from myself must necessarily have a significant dollar impact on the Saskatchewan government, and I have given this aspect of the matter very serious consideration.

I am aware that the Alberta Ombudsman agreed that the supplement to 75 cents on the dollar, offered to all investors by Alberta, was an appropriate amount.[18] This was based on his view that the investors themselves speculated in opting for the

higher interest rate offered on FIC/AIC investment contracts. I do not share Mr. Trawick's view. As aforementioned, the ICA did not allow for investor access to information which would help potential investors to assess the companies' financial stability. The government assumed the role of protector and the task of assessing the worth of the companies by requiring disclosure to itself of certain financial information and by imposing specific requirements designed to safeguard the investments made by Saskatchewan citizens. With investment contracts the investors' chief concern was the stability and solidity of the companies not, as with securities, whether the share price would rise or fall. As Mr. Beaudry said, with investment contracts there should be no risk and certainly not the risk that the regulators would or would not properly administer the legislation.

In light of the responsibility accepted by the Saskatchewan government in enacting the ICA, and in the light of the complete lack of any action to fulfil that responsibility (particularly since 1978) I am drawn to the position taken by the British Columbia Ombudsman, who recommended the B.C. government supplement the present recovery from asset liquidation and distribution up to 90 cents on the dollar.[19]

I am not suggesting that the Saskatchewan government was totally responsible for the investor losses in this province. The Code report has shown that the activities of the Principal Group directors and the inaction of the Alberta regulators were prime factors in the debacle. Yet, the Saskatchewan government must bear a substantial burden of responsibility for its abrogation of the role it assumed with the

passage of the Act.

However, I do agree with Mr. Owen that -

> "... the investment contracts could not have been totally secure investments, even if the companies had been perfectly regulated, because government regulators could not have been reasonably expected to exercise total and immediate control over the companies. The quarterly review of financial statements, together with regulatory due process, created an unavoidable time lag during which some losses could occur before the responsible decision to cancel licences could be made."[20]

Recovery from government sources to 100 percent would be an unrealistic expectation.

I also agree with Mr. Owen that:

> "While a strong legal argument can be made out that government, because of the administrative negligence of its officials, is legally liable to the investors for their losses in this case, such liability is not certain and would only be settled by a decision of the Supreme Court of Canada, which would take many years at vast public and private expense. In addition, whatever the ultimate court decision

> might be, it would not lessen for the investors the years of financial uncertainty already suffered or the degree of administrative negligence identified in this report."[21]

In light of the above, and the legal complexities notwithstanding, I feel there is a moral imperative on the Government of Saskatchewan to offer appropriate compensation to the investment contract holders in this Province.

Chapter V

Recommendation

Compensation to Investors

Following from my consideration of the matter, I feel the Saskatchewan government should act to bring the investors' recovery from company and provincial government sources to 90 percent of the value of their investment as at July 2, 1987 - the day the FIC/AIC licences were suspended in Saskatchewan - and I so recommend. In making this recommendation I am cognizant of the impending Alberta offer to all the investors in FIC/AIC, regardless of their province of residence. However, so far as is known at present, the Alberta offer would require that any recoveries received be apportioned between the investors and the province (of Alberta). I take this to mean that an investment contract holder who receives any compensation from Saskatchewan will have to assign the amount to Alberta for distribution on a pooling basis. This condition makes the Alberta offer objectionable to many investors.

As was announced on September 23, 1989 in a News Release from the B.C. Minister of Finance and Corporate Relations, the Honourable Mel Couvelier, the B.C. government offered partial compensation of 15 cents on the dollar to persons who had purchased their investment contracts in that province. Added to Alberta's offer this would theoretically bring the B.C. investors' recovery to 90 per cent, but the News Release noted:

"When asked how the British Columbia settlement relates to that offered previously by the Government of Alberta, Couvelier said that he expected the Alberta offer to be conditional on a requirement for investors to "pool" other monies received and share them with all investors. If such a condition applies to the British Columbia offer, British Columbia investors will only be permitted to keep about one-third of the British Columbia payment, with the remainder flowing to investors in other jurisdictions.

Couvelier is urging Alberta not to apply a pooling condition to British Columbia's offer, since this action would be unfair and could lead to lengthy interprovincial litigation. However, even if there is a pooling condition, the British Columbia offer will stand and investors will be able to accept both, recovering about 80 per cent of their investment in total."[22]

From the above it obviously follows that Saskatchewan investors who accept Alberta's offer will likewise be required to assign any recovery from Saskatchewan to Alberta for pooling, thus diluting the recovery and assisting all investors to a greater recovery than 75 per cent, but at no additional cost to the Government of Alberta.

My concern is for the investment contract holders in Saskatchewan and it is obvious that the only way to protect the investors from such a scheme is for the Saskatchewan government to provide the full difference between present recovery and 90 cents on the dollar. This would amount to 33 cents on the dollar to FIC contract holders and 30 cents on the dollar to AIC contract holders.

While my recommendation reflects the total disregard of its regulatory obligations by the Government of Saskatchewan, I recognize the role of the Alberta government in the fiasco and do not feel that the Saskatchewan government (the people of Saskatchewan) should have to bankroll Alberta's responsibility to its own citizens. However, given the conditions attached to Alberta's offer such "assistance" to the investors in that province (perhaps assistance to the Alberta government would be more correct) could only be avoided by Saskatchewan paying out its own investors the full 33/30 cents on the dollar, and then seeking appropriate recovery from Alberta. Anything less would leave the Saskatchewan investors in an invidious position, as has happened in B.C.

I am aware that the Saskatchewan government is on record as stating there will be no bail-out for FIC/AIC investors,[23] on the basis that the fault lies solely with Alberta and that the Saskachewan regulators did nothing wrong. The Honourable Gary Lane said in the Assembly, on September 10, 1987:

> "I think that the government's position has been well stated before on numerous occasions, Mr. Speaker, and that is that the

> department complied with its mandate, and that it was acting under the proper advice and in the normal course of its activities.[24]

and on July 19, 1989 the then Minister of Consumer and Commercial Affairs, the Honourable Ray Meiklejohn, stated:

> "Mr. Speaker, there is no evidence of any negligence on the part of this government."[25]

I venture to suggest that the government can no longer maintain such a posture with any degree of credibility, and I submit that these statements were made without a real awareness of the history of non-regulation in this province - a history which encompasses all administrations since 1952.

Chapter VI

Conclusion

Comments

In concluding this report I wish to thank Deputy Minister Kesslar and his officials for their complete co-operation during my investigation.

I also wish to comment that the circumstances surrounding this case are unlikely to arise again. Responsibility for the ICA was transferred to the Securities Commission in 1987, following the Principal Group collapse and the Act was later repealed with the passing of the new Securities Act in November, 1988. I do not see that acceptance of my recommendation would set a precedent for the Government.

In addition, as regards the continuing responsibility of the Department of Consumer and Commercial Affairs for the registration and regulation of out-of-province companies, I am pleased to note that a formal Intergovernmental Agreement on Information Sharing on Financial Institutions was inked between the four Western Provinces on October 31, 1988, followed by a similar agreement between all ten provinces, signed on April 20, 1989. These agreements provide for the exchange of information, on a reciprocal basis, for the purposes of policy development and for the administration and enforcement of provincial statutes regulating financial institutions.

This is an eminently sensible and overdue development. A primary or incorporating regulator can no longer deny the existence of a convention of reliance on his/her administration of regulatory statutes but, so far as I am aware, these statutes do not acknowledge the existence of the agreements and they still impose specific obligations on the secondary regulator. A secondary jurisdiction cannot just sit back and hope; there must still be active participation by all regulators. Certainly the complacency of the past has been exchanged for a renewed intention to do the job as it should be done, and it is to be hoped that the lessons of this Principal affair will endure.

In the interest of fairness I would emphasize that the failure in this case was failure of government as a whole. Certainly the individual officials involved were administratively negligent, but political reality and a lack of continuity at the permanent head level did not help. Eight changes of Deputy Minister and/or acting Deputy Minister between 1978 and 1984, while perhaps unavoidable, is scarcely the way to consistency of administration or to the development of departmental programs. Also, the loss of a new (1984) Compliance Review Officer position in the Superintendent's office to the government's austerity axe, after only ten months, is scarcely the way to further the regulatory effectiveness of that office.

Although, at the material time, there were only three investment contract companies in Saskatchewan, the Superintendent's office had numerous other responsibilities. With 303 insurers, 93 Trust and Loan Corporations, 459 Real Estate Brokers, 1,019 businesses in the agricultural implement industry, 280 Credit Unions, 1,180 other

licencees in the Province, and an establishment of only 22 investigative and audit personnel, the office has an immense task. This is not to say that they couldn't find the staff to examine the FIC/AIC documents (tradition had assigned them to a low regulatory priority) but it's a harsh reality that expediency seldom pays any regard to actual staffing needs in relation to the function performed.

The description of the Compliance Review Officer position cited its purpose as:

> "... to review and analyze complex schemes and proposals such as timesharing, pyramid franchising, insurance and reinsurance, real estate brokerage and sales, investment contracts, trust and loan proposals and any other general plan or schemes that come under the general purview of the licensing statutes administered by this Branch. The purpose of the review and analysis is to ensure that established standards are met in the area of legislation, regulation or administrative policy."

The Compliance Review Officer may not have made any difference so far as the FIC/AIC collapse is concerned - the investment contract companies were no big priority - but the government's effectiveness in consumer protection was not enhanced by the loss of this position so soon after its necessity had been recognized by its addition to the Superintendent's establishment. All too frequently, it seems, governments fail to adequately recognize the need to properly meet the statutory obligations it assumes through legislation. All too often do administrators

cite lack of staff as the reason for failures in such areas.

I think, however, that this Principal Group case demonstrates to government that it must take its responsibilities seriously. Regulatory and watchdog agencies set up for the protection of the public must be given the wherewithal to perform their duties in a meaningful and timely fashion, and not be relegated to the status of political window dressing. If the government legislates to itself specific functions, it must be in a position to fulfill those functions - or face the consequences.

However, while my findings and recommendation are firm, I do not wish to leave the impression that the Department of Consumer and Commercial Affairs is, or has ever been, totally ineffective. As I've said, my raison d'etre is fairness and I must acknowledge that the department is not a major source of complaints to my office. Given the volume of contact with the public, the department must be doing something right to generate only 9 complaints in 1988. Also, their consumer education program is a success story and a model for the rest of the country.

But as governments are happy to accept praise for achievements, so too must they accept the blame for failures, and it is the mark of a fair government to put right the wrongs for which it may be responsible.

I therefore urge the Government of Saskatchewan to put right the wrong done to the citizens of this Province by its failure in the administration of The Investment Contracts Act as regards First Investors Corporation Ltd. and Associated Investors of Canada Ltd.

ENDNOTES

CHAPTER II

[1]Debates and Proceedings of the Legislative Assembly of Saskatchewan - first session - Twenty-first Legislature (hereinafter Hansard), Friday, September 11, 1987, pp. 2457-2458.

[2]Hansard. Tuesday, October 27, 1987, p. 3559.

[3]Special Report - The Role of the Provincial Government in the Regulation of the Principal Group of Companies 1989. Office of the Ombudsman, Province of Alberta - Aleck Trawick, Ombudsman (hereinafter Trawick), p. 305.

[4]Ibid., p. 306.

[5]The Regulation of AIC Ltd. and FIC Ltd. by the B.C. Superintendent of Brokers (The Principal Group Investigation) - Public Report No. 19 September 1989 Office of the Ombudsman, Province of British Columbia, Stephen Owen, OMbudsman (hereinafter Owen), p. 78.

[6]Hansard. Tuesday, October 27, 1987, p. 3576.

[7]Owen, p. 78.

[8]Final Report of the Inspector, William E. Code, Q.C. (hereinafter Code), p. 494.

CHAPTER III

[9]Ibid., p. 352.

[10]Ibid., p. 347.

[11]Trawick, pp. 104-105.

[12]Code, P. 380.

[13]Report of the Minister in the Matter of the Trade Practice Act, R.S.B.C. 1979, c.406 and In the Matter of First Investors Corporation Ltd., Associated Investors of Canada Ltd., Principal Consultants Ltd., Principal Savings and Trust Company, and Principal Group Ltd., p. 43.

CHAPTER IV

[14]Hansard, Monday, September 14, 1987, p. 2484.

[15]Code, p. 503.

[16]Trawick, p. 295.

[17]Ibid., p. 296.

[18]Ibid., p. 304.

[19]Owen, p. 136.

[20]Ibid., p. 136.

[21]Ibid., Overview, p. vii.

CHAPTER V

[22]Province of British Columbia NEWS RELEASE - Ministry of Finance and Corporate Relations, September 22, 1989, p. 2.

[23]Hansard, Wednesday, October 14, 1987, p. 3317.

[24]Hansard, Tuesday, September 10, 1987, p. 2410.

[25]Hansard, Wednesday, July 19, 1989, p. 2786.

CHAPTER I-14

An Act respecting Investment Contracts

SHORT TITLE

Short title

1. This Act may be cited as *The Investment Contracts Act*.

INTERPRETATION

Interpretation

2. In this Act:

"filed"

(a) "filed" means filed under this Act;

"investment contract"

(b) "investment contract" means a contract, agreement, certificate, instrument or writing containing an undertaking by an issuer to pay the holder thereof, or his assignee, personal representative, or other person, a stated or determinable maturity value in cash or its equivalent on a fixed or determinable date and containing optional settlement, cash surrender or loan values prior to or after maturity, the consideration for which consists of payments made or to be made to the issuer in instalments or periodically, or of a single sum, according to a plan fixed by the contract, whether or not the holder is or may be entitled to share in the profits or earnings of, or to receive additional credits or sums from, the issuer, but does not include a contract within the meaning of *The Saskatchewan Insurance Act;*

"issuer"

(c) "issuer" means an incorporated company that offers for sale, sells, makes or enters into investment contracts of its own issue, but does not include an insurer within the meaning of *The Saskatchewan Insurance Act* or a loan company or a trust company within the meaning of *The Trust and Loan Companies Licensing Act;*

"licensed"

(d) "licensed" means licensed under this Act;

"minister"

(e) "minister" means the member of the Executive Council to whom for the time being the administration of this Act is assigned;

"net worth"

(f) "net worth" means the value of the qualified assets of an issuer less:

(i) the sum of its statutory reserves; and

(ii) its total liabilities;

"prescribed"

(g) "prescribed" means prescribed by the regulations;

"qualified assets"

(h) "qualified assets" means:

(i) cash;

(ii) bonds, debentures, stocks, other evidences of indebtedness and other securities, in which or on the security of which an issuer is authorized by this Act to invest or lend its funds;

(iii) real property which an issuer is authorized to acquire and hold pursuant to this Act;

when valued under section 28;

"salesman" (i) "salesman" means a person employed, appointed or authorized by an issuer to sell investment contracts;

"statutory reserves" (j) "statutory reserves" means the reserves that an issuer is required to maintain pursuant to section 20;

"superintendent" (k) "superintendent" means the Superintendent of Insurance or the Deputy Superintendent of Insurance. R.R.S. 1965, c.144, s.2; 1980-81, c.21, s.24.

FORM OF INVESTMENT CONTRACTS

Filing of form of contract **3.** — (1) No person shall issue for sale in Saskatchewan an investment contract unless two copies of the form thereof have been filed with the superintendent and one of those copies has been returned to the issuer bearing an endorsement by the superintendent to the effect that the contract has been accepted for filing.

(2) Where a contract is not accepted for filing the superintendent shall, on being so requested, specify the reasons therefor. R.S.S. 1965, c.144, s.3.

LICENCES

Licence to issue and sell investment contracts **4.** No person shall:

(a) issue for sale an investment contract unless he is licensed as an issuer;

(b) offer for sale or sell an investment contract unless he is licensed as an issuer or as a salesman of a licensed issuer. R.S.S. 1965, c.144, s.4.

Prohibition respecting holding out **5.** No person shall hold himself out as an issuer or salesman unless such person is the holder of a subsisting licence under this Act. R.S.S. 1965, c.144, s.5.

Limitation on granting of issuer's licence **6.** No person other than an incorporated company shall be licensed as an issuer. R.S.S. 1965, c.144, s.6.

What companies may be licensed **7.** — (1) No company shall be licensed under this Act as an issuer unless:

(a) there has been filed with the superintendent:

(*i*) a certified copy of the Act, memorandum and articles of association, letters patent or other instrument of incorporation of the company, provided that if any of these instruments have been filed with the Registrar of Companies under *The Companies Act*, they shall be deemed to have been filed in compliance with this section;

(*ii*) a certified copy of the balance sheet of the company as at the close of its last completed fiscal year and its auditor's report thereon; and

(*iii*) two copies of all forms of investment contracts proposed to be issued by the company for sale in Saskatchewan;

(*b*) the company's unimpaired paid-in capital, paid-in surplus and earned surplus, or any one or more of them, amount in the aggregate to $200,000 or such lesser amount not less than $100,000 as the superintendent may approve;

(*c*) subject to subsection (2), arrangements satisfactory to the superintendent have been made for the deposit with a trust company, chartered bank or other suitable depository within Canada of qualified assets aggregating in amount, when valued as provided in section 28, not less at any time than the amount for which the company, under the terms of its investment contracts, is liable as of that time to pay in cash to the holders of all its investment contracts then outstanding, or aggregating such lesser amount as the superintendent may consider appropriate in the circumstances.

(2) In the case of a company that maintains with a trust company, chartered bank or other suitable depository or depositories outside Saskatchewan but within Canada a deposit or deposits of qualified assets in the aggregate amount specified in clause *(c)* of subsection (1) or other deposit satisfactory to the superintendent, no further deposit shall be required. R.S.S. 1965, c. 144, s. 7.

Application for licence or renewal of licence

8. Every application for a licence or renewal of a licence shall be made to the superintendent upon the prescribed form provided by him and shall be accompanied by the prescribed fee. R.S.S. 1965, c. 144, s. 8.

Address for service

9. Every applicant for a licence or renewal of a licence shall state in the application an address for service in Saskatchewan, and any notice under this Act or the regulations shall for all purposes be deemed to be sufficiently served if delivered or sent by prepaid mail to the latest address for service so stated or shown in a notice given pursuant to section 18. R.S.S. 1965, c. 144, s. 9.

Recommendation of salesman by licensed issuer

10. Every application for a licence of a salesman shall be accompanied by a recommendation made by or on behalf of a licensed issuer respecting the applicant, and a declaration that the applicant,

if granted a licence, is to act as a salesman employed, appointed or authorized to sell investment contracts of the issuer by whom or on whose behalf the declaration is made, and the name of the issuer as principal of the licensee shall be set forth in the licence when issued. R.S.S. 1965, c. 144, s. 10.

What salesmen may be licensed

11.—(1) A salesman may be licensed only where he is the salesman of a licensed issuer.

(2) The termination of the employment, appointment or authorization of a salesman employed, appointed or authorized to sell investment contracts of a licensed issuer shall operate as a suspension of the licence of the salesman until, upon application by the salesman, the superintendent reinstates the licence. R.S.S. 1965, c. 144, s. 11.

Granting of licence or renewal

12. The superintendent may grant a licence or renewal of a licence if he is satisfied that the applicant is suitable to be licensed and the proposed licensing is not for any reason objectionable, but if the superintendent after investigation is for any reason of the opinion that the applicant should not be granted a licence he may refuse the application. R.S.S. 1965, c. 144, s. 12.

Publicatin of list of licensed issuers

13. The superintendent shall cause to be published in *The Saskatchewan Gazette* in the month of July in each year a list of companies licensed under this Act as issuers. R.S.S. 1965, c. 144, s. 13.

Expiration of licence

14. Every licence shall expire at midnight on the thirty-first day of December but may, upon application to the superintendent in the prescribed form and upon payment of the prescribed fee, be renewed unless previously cancelled or suspended by the superintendent. R.S.S. 1965, c. 144, s. 14.

Suspension or cancellation of licence

15.—(1) The superintendent may suspend or cancel a licence where in his opinion it is in the public interest to do so.

(2) Without limiting the generality of subsection (1), the superintendent may suspend or cancel the licence of an issuer where the net worth of the issuer is less than:

(*a*) the aggregate of:

(*i*) one twenty-fifth of the statutory reserves of the issuer in respect of which interest is to be accumulated at a rate that is less than four per cent per annum; and

(*ii*) one-twentieth of the total of the other statutory reserves and liabilities of the issuer; or

(*b*) in the case of an issuer whose statutory reserves and liabilities total less than ten million dollars, the aggregate of:

(*i*) one-twentieth of the statutory reserves of the issuer in respect of which interest is to be accumulated at a rate that is less than four per cent per annum; and

(*ii*) one-fifteenth of the total of the other statutory reserves and liabilities of the issuer. R.S.S. 1965, c. 144, s. 15.

Further application for licence

16. A person whose licence has been cancelled may make a further application upon new and other material or where material circumstances have changed. R.S.S. 1965, c. 144, s. 16.

Superintendent may require further information

17. The superintendent may at any time require further information or material to be submitted by an applicant for a licence or a licensee within a specified time and may require verification by affidavit or otherwise of any information or material then or previously submitted. R.S.S. 1965, c. 144, s. 17.

Issuers and salesmen to notify superintendent of certain changes

18.—(1) Every licensed issuer shall notify the superintendent in writing of:

(*a*) any change in the address for service;

(*b*) the commencement and termination of the employment, appointment or authorization of every salesman.

(2) Every licensed salesman shall notify the superintendent in writing of:

(*a*) any change in his address for service; and

(*b*) every commencement and termination of his employment, appointment or authorization by a licensed issuer. R.S.S. 1965, c. 144, s. 18.

Appeal

19.—(1) A person who is dissatisfied with a decision of the superintendent under section 7, 12, 15 or subsection (2) of section 21 may, within sixty days from the date of the decision, appeal therefrom to a judge of the Court of Queen's Bench who may, upon hearing the appeal, make such order as to the granting of a licence or setting aside the suspension or cancellation of a licence or for further inquiry by the superintendent into the facts of the case and as to costs as the judge considers just.

(2) The appeal shall be by notice of motion and a copy thereof shall be served upon the superintendent within the sixty days mentioned in subsection (1) and not less than fifteen days before the day on which the motion is returnable.

(3) Upon the request of a person who desires to appeal the superintendent shall furnish to that person a certified copy of all documents in the possession of the superintendent relating to the decision complained against.

(4) There shall be no further appeal. R.S.S. 1965, c. 144, s. 19.

RESERVES.

Reserves to be maintained by issuer

20. Every licensed issuer shall, at all times:

(*a*) maintain reserves for the payment of its outstanding investment contracts that, together with all future payments to be received by the issuer on those investment contracts, or the portions of those future payments still to be applied to reserves, and with accumulations of interest at an assumed rate not to exceed a rate approved by the superintendent, will attain the face or maturity value specified in the contracts when due, or the amount payable in accordance with the terms of the contracts; or

(*b*) maintain reserves of such lesser amount as the superintendent may consider appropriate in the circumstances;

but the reserves shall at no time be less than the amount for which the licensed issuer, under the terms of its investment contracts, is liable to pay in cash to the holders of all its investment contracts then outstanding. R.S.S. 1965, c. 144, s. 20.

DIVIDENDS.

Restriction on payment

21.—(1) No issuer shall pay dividends:

(*a*) while the capital of the issuer is impaired;

(*b*) that would impair the capital of the issuer;

(*c*) while the net worth of the issuer is less than the amount mentioned in clause *(a)* of subsection (2) of section 15;

(*d*) that would reduce the net worth of the issuer below the amount mentioned in clause *(a)* of subsection (2) of section 15.

(2) Where an issuer pays dividends contrary to subsection (1) the superintendent may suspend or cancel the licence of the issuer. R.S.S. 1965, c. 144, s. 21.

INVESTMENTS.

Restriction on investment of funds

22. Subject to section 24 and the regulations, a licensed issuer may invest or lend its funds only in or on the security of investments in which or on the security of which a company registered under the *Canadian and British Insurance Companies Act* (Canada) may invest or lend its funds and only subject to the limitations and restrictions that apply to a company registered under that Act. R.S.S. 1965, c. 144, s. 22.

Investments in corporate name only, etc.

23. All investments and deposits of the funds of a licensed issuer shall be made in its corporate name, and no director or other officer

thereof, and no member of a committee having any authority in the investment or disposition of the funds of the issuer, shall, either directly or indirectly, accept or be the beneficiary of any fee, brokerage, commission, gift or other consideration for or on account of any loan, deposit, purchase, sale, payment or exchange made by or on behalf of the issuer, or be pecuniarily interested in any such loan, deposit, purchase, sale, payment or exchange, either as borrower, principal, co-principal, agent or beneficiary, except that if he is the holder of an investment contract he is entitled to all the benefits accruing under the terms of his contract. R.S.S. 1965, c. 144, s. 23.

Power to acquire and hold real property

24.—(1) A licensed issuer may acquire and hold for its own use and benefit real property necessary for the transaction of its business and may acquire or hold or construct a building larger than is required for the transaction of its business and may lease any part of the building not so required.

(2) A licensed issuer may acquire and hold real property that is *bona fide* mortgaged to it by way of security, and real property acquired by it by foreclosure or in satisfaction of a debt, and may sell, mortgage, lease or otherwise dispose of such real property, but the issuer shall sell any real property acquired by it by foreclosure or in satisfaction of a debt within seven years after it has been so acquired. R.S.S. 1965, c. 144, s. 24.

FILING OF STATEMENTS AND BALANCE SHEET.

Filing of statements

25. Not later than thirty days after the expiration of each quarterly period ending March 31, June 30, September 30, and December 31 respectively, every licensed issuer shall file with the superintendent a statement, certified by its auditor, showing:

(*a*) the amount on the last day of the quarterly period required by section 20 to be maintained as reserves by the issuer on all outstanding investment contracts;

(*b*) all qualified assets on deposit on the last day of the quarterly period last ended with the trust company, chartered bank or other depository or depositories within Canada approved by the superintendent and the value, when valued as provided in section 28, of those qualified assets as at that date; and

(*c*) such other information as the superintendent may require. R.S.S. 1965, c. 144, s. 25.

Filing of balance sheet, etc.

26.—(1) Not later than ninety days after the expiration of its fiscal year, every licensed issuer shall file with the superintendent a balance sheet and profit and loss statement for such completed fiscal year, certified by two of its directors and reported on by its auditor, and such other financial statements as the superintendent may require.

(2) The market value of all securities at the date of the statement shall be noted on the balance sheet. R.S.S. 1965, c. 144, s. 26.

Auditor

27. The auditor of an issuer licensed under this Act shall be a person or firm acceptable to the superintendent. R.S.S. 1965, c. 144, s. 27.

Valuation of assets

28.—(1) In any statement or balance sheet to be filed with the superintendent under this Act, an issuer may value its assets as follows:

(*a*) cash —in the amount thereof in lawful money of Canada;

(*b*) first mortgages —in the amount of the balance of the principal sum secured thereby together with all unpaid interest accrued thereon, but where a mortgage has been acquired at a discount, the valuation shall be reduced by the unearned portion of the discount computed as being the proportion thereof that bears the same ratio to the total discount as the amount of the mortgage at the date of valuation bears to the amount of the mortgage at the time it was acquired by the issuer; or in lieu thereof on such other basis as may be acceptable to the superintendent;

(*c*) bonds, debentures and other evidences of indebtedness having a fixed term and rate of interest, that are not in default as to principal or interest and that in the opinion of the superintendent are amply secured:

(*i*) if purchased at par —at the par value;

(*ii*) if purchased above or below par —on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield meantime the effective rate of interest at which the purchase was made, provided that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase;

(*d*) bonds, debentures and other evidences of indebtedness having a fixed term and rate of interest, that are in default as to principal or interest or that in the opinion of the superintendent are not amply secured —at the market value at the date of the statement;

(*e*) stocks —at the book value not in excess of the cost to the issuer and in the aggregate not in excess of the aggregate market value at the date of the statement; and

(*f*) other securities —at the book value but not in excess of the aggregate market value at the date of the statement.

(2) Notwithstanding subsection (1), where any assets consist of securities whose market values are unduly depressed and in respect of which companies registered under the *Canadian and British Insurance Companies Act* (Canada) have been authorized to use

values in excess of the market values, those assets may, with the approval of the superintendent, be valued as authorized under that Act.

(3) Notwithstanding subsection (1), if it appears to the superintendent that the amount secured by mortgage on a parcel of real estate, together with interest due and accrued thereon, is greater than the value of the parcel, or that the parcel is not sufficient for the loan and interest, he may procure an appraisement thereof, and if from the appraised value it appears that the parcel of real estate is not adequate security for the loan and interest, the loan or mortgage shall be valued at an amount not to exceed the appraised value. R.S.S. 1965, c. 144, s. 28.

INSPECTION AND SUPERVISION.

Inspection by superintendent

29.—(1) The superintendent may at any time make or cause to be made an inspection of the books, documents and records of any issuer and of any salesman.

(2) Upon any such inspection, the superintendent or his duly authorized representative shall be entitled to free access to all books of account, cash, securities, documents, bank accounts, vouchers, correspondence and records of every description of the issuer or salesman and no person shall withhold or destroy, conceal or refuse to furnish any information or thing reasonably required by the superintendent for the purposes of the inspection.

(3) Where the office of a licensed issuer at which an inspection is made is outside Saskatchewan, the issuer shall pay the account of the superintendent in connection with the inspection upon the certificate of the superintendent approved by the minister. R.S.S. 1965, c. 144, s. 29.

Advertising and forms

30. The superintendent may at any time require any issuer or salesman to submit for review any circulars, pamphlets, brochures, specimen contracts, application forms or other documents used by the issuer or salesman in connection with the sale of investment contracts. R.S.S. 1965, c. 144, s. 30.

OFFENCES AND PENALTIES.

Penalties

31.—(1) Every person who violates subsection (1) of section 3, clause *(a)* of section 4 or subsection (1) of section 21 is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000.

(2) Every person who violates or fails to comply with any other provision of this Act is guilty of an offence and liable on summary conviction to a fine of not less than $25 nor more than $100. R.S.S. 1965, c. 144, s. 31.

Limitation of prosecutions

32.—(1) No proceedings under subsection (1) of section 31 shall be instituted except with the consent of the minister.

(2) No proceedings under subsection (1) of section 31 shall be commenced more than one year after the facts upon which the proceedings are based first came to the knowledge of the superintendent.

(3) No proceedings under subsection (2) of section 31 shall be commenced more than one year after the commission of the alleged offence. R.S.S. 1965, c. 144, s. 32.

MISCELLANEOUS.

Extension of time

33. The superintendent may extend the time for the filing of any statement, balance sheet or other document under this Act. R.S.S. 1965, c. 144, s. 33.

Exempted sales

34. Nothing in this Act prevents the sale of an investment contract by or on behalf of the holder thereof where the sale is not made in the course of continued and successive transactions of like character or by a person whose usual business is the issuance or sale of investment contracts. R.S.S. 1965, c. 144, s. 34.

Representations as to financial standing of issuer

35. No person shall make any representation, written or oral, that the superintendent has in any way passed upon the financial standing or solvency of any issuer licensed under this Act or upon the merit of any investment contract. R.S.S. 1965, c. 144, s. 35.

Regulations

36. The Lieutenant Governor in Council may make regulations:

(*a*) prescribing the fees payable upon applications for licences and renewals of licences and any other fees for services in connection with the administration of this Act and the regulations;

(*b*) prescribing the forms for use under this Act;

(*c*) designating investments or securities as qualified assets within the meaning of this Act;

(*d*) designating investments or securities as investments in which a licensed issuer may invest its funds, in addition to the investments mentioned in section 23;

(*e*) limiting or restricting the total amount of the funds of a licensed issuer that may be invested in any class of investments or securities to a percentage of the total assets of the issuer;

(*f*) respecting any other matter necessary or advisable to carry out effectively the intent and purpose of this Act;

and upon the publication thereof in the *Gazette* all such regulations and any amendment, alteration or repeal thereof shall become effective in all respects as if incorporated in this Act. R.S.S. 1965, c. 144, s. 36.

CHAPTER O-4.

An Act to provide for the appointment of a Person to Investigate Administrative decisions or acts of Departments of the Government and certain other Organizations and to define the Person's duties, functions and powers.

Short title

1. This Act may be cited as *The Ombudsman Act*.

Interpretation

2. In this Act:

"agency of the government"

(*a*) "agency of the government" means any board, commission, association or other body of persons, whether incorporated or unincorporated, all the members of which or all the members of the board of management or board of directors of which:

(*i*) are appointed by an Act or by an order of the Lieutenant Governor in Council; or

(*ii*) if not so appointed, in the discharge of their duties are public officers or servants of the Crown, or for the proper discharge of their duties are, directly or indirectly, responsible to the Crown;

"department"

(*b*) "department" means a department or branch of the executive government of the province;

"minister"

(*c*) "minister" means a member of the Executive Council. 1972, c. 87, s. 2.

Appointment

3.—(1) There shall be appointed, as an officer of the Legislature, a commissioner for investigation to be called an Ombudsman.

(2) The person appointed as Ombudsman shall be a Canadian citizen and, subject to section 5, he shall be appointed by the Lieutenant Governor in Council on the recommendation of the Legislative Assembly.

(3) Unless he sooner resigns, dies or is removed from office, the Ombudsman shall hold office for a term of five years from the date of his appointment and may be reappointed for one additional term of five years.

(4) The Ombudsman may at any time resign his office by writing addressed to the Speaker of the Assembly or to the President of the Executive Council if there is no Speaker or if the Speaker is absent from the province. 1972, c. 87, s. 3.

Removal or suspension

4. The Lieutenant Governor in Council on a resolution of the Assembly shall remove the Ombudsman from his office or suspend him according to the resolution. 1972, c. 87, s. 4.

Suspension when Legislature not in session

5.—(1) When the Legislature is not in session the Lieutenant Governor in Council may suspend the Ombudsman for disability, neglect of duty, misconduct or bankruptcy proved to the satisfaction of the Lieutenant Governor in Council, but the suspension shall not continue beyond the end of the next ensuing session of the Legislature.

(2) Where the office of Ombudsman is vacant or the Ombudsman is suspended under subsection (1), the Lieutenant Governor in Council shall appoint an acting Ombudsman to hold office until a person is appointed as Ombudsman under section 3 or the suspension has been dealt with by the Assembly. 1972, c. 87, s. 5.

Salary

6.—(1) The Ombudsman shall be paid:

(*a*) a salary equal to the salary fixed from time to time by the Lieutenant Governor in Council pursuant to subsection 5(1) of *The Provincial Court Act* to be paid to a judge of the Provincial Court of Saskatchewan; and

(*b*) an allowance for travelling and other expenses incurred by him in the performance of his duties that may be approved by the Lieutenant Governor in Council.

(2) Sums required for the purposes of this Act may be paid out of moneys appropriated by the Legislature for the purpose. 1972, c. 87, s. 6; 1973-74, c. 74, s. 1; 1974-75, c. 32, ss. 2, 3; 1976, c. 41, s. 1; 1976-77, c. 54, s. 1; 1978, c. 40, s. 1; 1979, c. 49, s. 2.

Application of certain Acts to Ombudsman and staff

7.—(1) The Ombudsman is not subject to *The Public Service Act*, except section 54 thereof, and he is subject to *The Public Service Superannuation Act*.

(2) The staff for the Ombudsman shall consist of such persons or positions as are required for the proper administration of this Act.

(3) *The Public Service Act* and *The Public Service Superannuation Act* apply to the members of the staff of the Ombudsman. 1972, c. 87, s. 7.

Oath of office

8. The Ombudsman shall, before entering upon the duties of his office, take and subscribe before the Speaker of the Assembly or the Clerk of the Legislative Assembly the following oath:

OATH OF OFFICE.

"I, , do swear that I will faithfully and impartially perform and discharge the duties and functions of Ombuds-

man and that I will not, except as provided in *The Ombudsman Act*, divulge any information received by me in the exercise of my powers or the performance of my duties and functions under that Act". 1972, c. 87, s. 8.

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Same

9. Every member of the staff of the Ombudsman shall, before entering upon the duties of his office, take and subscribe before the Ombudsman the following oath:

OATH OF OFFICE.

"I, , do swear that I will faithfully and impartially perform and discharge the duties and functions of my office as an employee of the Ombudsman and that I will not, except as provided in *The Ombudsman Act*, divulge any information received by me in the exercise of my powers or the performance of my duties and functions under that Act". 1972, c. 87, s. 9.

Secrecy

10.—(1) The Ombudsman and every member of his staff shall maintain secrecy in respect of all matters that come to his knowledge in the exercise of his powers and the carrying out of his duties and functions under this Act.

(2) Notwithstanding subsection (1) or any oath taken under this Act, the Ombudsman may disclose in a report made by him under this Act any matter that he considers necessary to disclose in order to establish grounds for his conclusions and recommendations. 1972, c. 87, s. 10.

Delegation of powers

11.—(1) With the prior approval of the Lieutenant Governor in Council the Ombudsman may, by writing under his hand, delegate to any member of his staff any of his powers under this Act except the power of delegation under this section and the power to make a report under this Act.

(2) A delegation may be made to a specified person of the staff of the Ombudsman or to the holder for the time being of a specified office or to the holders of offices of a specified class of the staff.

(3) Every delegation is revocable at will and no delegation prevents the exercise of any power by the Ombudsman.

(4) A delegation may be made subject to such restrictions and conditions as the Ombudsman thinks fit and may be made either generally or in relation to a particular case or class of cases.

(5) Until a delegation is revoked, it continues in force according to its tenor and where the Ombudsman who made the delegation ceases to hold office the delegation shall continue to have effect as if it was made by his successor.

(6) Where the Ombudsman has delegated a power under this section, the person to whom the power is delegated shall, when required to do so, produce evidence of his authority to exercise the power. 1972, c. 87, s. 11.

Powers, functions and duties

12.—(1) It is the duty of the Ombudsman and he has power to investigate any decision or recommendation made, including any

recommendation made to a minister, or any act done or omitted, relating to a matter of administration and affecting any person or body of persons in his or its personal capacity, in or by a department or agency of the government or by any officer, employee or member thereof in the exercise of any power, duty or function conferred or imposed on him by any Act whereby any person is or may be aggrieved.

(2) The Ombudsman may make an investigation of a matter either on a written complaint made to him by any person or of his own motion and he may commence an investigation notwithstanding that the complaint may not on its face be against a decision, recommendation, act or omission mentioned in subsection (1).

(3) A committee of the Assembly may at any time refer to the Ombudsman for investigation and report any petition or matter that is before the committee for consideration and the Ombudsman shall:

(*a*) subject to any special directions of the committee, investigate the petition or matter referred to him so far as it is within his jurisdiction; and

(*b*) make such report to the committee as he thinks fit.

(4) The Lieutenant Governor in Council may at any time refer to the Ombudsman for investigation and report any matter relating to the administration in or by any department or agency of the government or by any officer, employee or member thereof and the Ombudsman shall:

(*a*) subject to any special directions of the Lieutenant Governor in Council, investigate the matter referred to him so far as it is within his jurisdiction; and

(*b*) make such report to the Lieutenant Governor in Council as he thinks fit. 1972, c. 87, s. 12.

Complaints to Ombudsman

13.—(1) Every complaint to the Ombudsman shall be made by a person who is, or who before the date of the event that gave rise to the complaint was, a resident of Saskatchewan.

(2) A complaint under this Act may be made in respect of any matter that arises after this Act comes into force or that arose within the twelve months immediately preceding the coming into force of this Act.

(3) No complaint shall be investigated by the Ombudsman unless the complaint was made within twelve months after the event that gave rise to the complaint occurred.

(4) Notwithstanding subsection (3), if the Ombudsman for special reasons to be certified by him concludes that a complaint should be investigated, he may investigate the complaint regardless of when the event that gave rise to the complaint ocurred. 1972, c. 87, s. 13.

Ombudsman not restricted by provisions of other Acts

14. The Ombudsman may exercise his powers and shall carry out his duties and functions under this Act notwithstanding anything in any other Act which provides:

(*a*) that any decision, recommendation, act or omission that he is investigating is final or that no appeal lies in respect thereof; or

(*b*) that no proceeding or decision of the department, agency of the government, officer, employee or person whose decision, recommendation, act or omission it is shall be challenged, reviewed, quashed or called into question. 1972, c. 87, s. 14.

Restrictions on jurisdiction

15.—(1) Nothing in this Act authorizes the Ombudsman to investigate:

(*a*) any decision, recommendation, act, order or omission of the Assembly, a committee of the Assembly, the Lieutenant Governor in Council, the Executive Council or a member or committee of the Executive Council;

(*b*) any decision, order or omission of a court, a judge of a court, a referee or local master of a court, a magistrate or a justice of the peace made or given in any action or proceeding in the court or before the judge, referee, local master, magistrate or justice of the peace;

(*c*) any award, decision, recommendation or omission of an arbitrator, or board of arbitrators, established by or under any Act;

(*d*) any decision, recommendation, act or omission in respect of which there is under an Act a right of appeal or objection or a right to apply for a review of the merits of the case to any court or tribunal constituted by or under an Act, whether or not that right of appeal, objection or application has been exercised in the particular case and whether or not any time prescribed for the exercise of that right has expired, unless the Ombudsman is satisfied that in the particular case it would have been unreasonable to expect the complainant to resort to the court or tribunal, but in that case the investigation shall not commence until after the time for the exercise of that right to appeal, object or apply has expired;

(*e*) any decision, recommendation, act or omission of any person acting as solicitor or counsel for the Crown in relation to any proceedings;

(*f*) any decision, recommendation, act or omission of a deputy minister, an acting deputy minister, associate deputy minister or assistant deputy minister when acting as such or of any person who by virtue of his appointment or actual employment is expressly or by necessary implication directly responsible to a minister;

(*g*) any decision, recommendation, act, order or omission of any department or agency of the government, or an officer, employee or person, in relation to any matter arising between the department, agency, officer, employee or person, and the government of another province or the Government of Canada or a municipality or school board.

(2) Where a dispute arises as to whether a person mentioned in clause (*f*) of subsection (1) is a person who by virtue of his appointment or actual employment is expressly or by necessary implication responsible to a minister, the dispute shall be referred to and be determined by the Attorney General and the decision of the Attorney General is final. 1972, c. 87, s. 15.

Question of jurisdiction to investigate

16.—(1) Where any question arises respecting the jurisdiction of the Ombudsman to investigate any case or class of cases under this Act, he may apply to the Court of Queen's Bench or a judge of the court sitting in chambers for a declaratory order determining the question.

(2) Notice of an application under subsection (1) shall be served upon the Attorney General not less than fifteen days before the date on which the application is to be heard. 1972, c. 87, s. 16.

Certain correspondence with Ombudsman privileged

17. Notwithstanding any Act, where a letter written by a person in custody on a charge for an offence or after conviction for an offence, or by an inmate of a hospital, mental hospital, facility or institution operated by or under the direction of the government, or by any person in custody of another person for any reason, is addressed to the Ombudsman, it shall be forwarded, unopened, to the Ombudsman by the person for the time being in charge of the place where the writer of the letter is detained or in which he is an inmate or by the person having custody of the writer. 1972, c. 87, s. 17.

Refusal to investigate

18.—(1) The Ombudsman may, in his discretion, refuse to investigate or cease to investigate a complaint if:

(*a*) it relates to a decision, recommendation, act or omission of which the complainant had knowledge for more than a year before the complaint is received by the Ombudsman;

(*b*) in his opinion it is frivolous, vexatious, not made in good faith or concerns a trivial matter;

(*c*) in his opinion upon a balance between the public interest and the person aggrieved, it should not be investigated or the investigation should not be continued;

(*d*) in his opinion the circumstances of the case do not warrant investigation;

(*e*) the complainant does not have a sufficient personal interest in the subject matter of the complaint; or

(*f*) during the course of an investigation it appears to him:

(*i*) that under the law or existing administrative practices the complainant has adequate remedy or right of appeal, other than a petition to the Legislature, whether or not the complainant has availed himself of it; or

(*ii*) that, having regard to all the circumstances of the case, further investigation is unnecessary.

(2) This section does not apply to an investigation or report required to be made under subsection (3) or (4) of section 12. 1972, c. 87, s. 18.

Notice of cessation etc., of investigation

19. Where the Ombudsman decides not to investigate, or to cease to investigate, a complaint, he shall inform the complainant of his decision and may, if he thinks fit, state his reasons therefor. 1972, c. 87, s. 19.

Notice of investigation

20.—(1) Before investigating any matter under this Act the Ombudsman shall notify the deputy minister of the department or the administrative or executive head of the agency of the government affected, as the case may be, of his intention to make the investigation.

(2) The notice shall be in writing and shall set forth the nature of the complaint, if any, received by the Ombudsman.

(3) The Ombudsman may in his discretion at any time during or after an investigation consult with the minister who is concerned in the matter of the investigation.

(4) On the request of the minister in charge of the department or agency of the government or in any case where an investigation relates to any recommendation made to a minister, the Ombudsman shall consult the minister after making the investigation and before forming a final opinion of any matter referred to in subsections (1) and (2) of section 24.

(5) Where, during or after an investigation, the Ombudsman is of the opinion that there is evidence of breach of duty or misconduct on the part of any officer or employee of any department or agency of the government, he shall refer the matter to the minister in charge of the department or agency of the government, as the case may require. 1972, c. 87, s. 20.

Conduct of investigation

21.—(1) Every investigation by the Ombudsman under this Act shall be conducted in private.

(2) The Ombudsman may hold hearings and hear or obtain information from any person he thinks fit and may make such inquiries as he thinks necessary.

(3) The Ombudsman is not required to hold a hearing and no person is entitled as of right to be heard by the Ombudsman but if

at any time it appears to the Ombudsman that there are sufficient grounds for his making a report or recommendation in respect of any matter that may adversely affect any department, agency of the government or person, he shall give to that department, agency or person an opportunity to make representations in respect of the matter and the department, agency or person may make representations in respect of the matter by counsel. 1972, c.87, s.21.

Ombudsman may require information and examine persons

22(1) Subject to section 23, the Ombudsman may require any person, other than a minister or a person mentioned in clause 15(1)(f), who in his opinion is able to give any information relating to any matter being investigated by him:

(a) to furnish information to him; and

(b) to produce any document or thing that, in his opinion, relates to the matter being investigated and that may be in the possession or under the control of that person;

whether or not that person is an officer, employee or member of the department or agency of the government and whether or not the document, paper or thing is in the custody or under the control of a department or agency of the government.

(2) The Ombudsman may summon before him and examine under oath:

(a) any person, other than a minister or a person mentioned in clause 15(1)(f), who is an officer, employee or member of any department or agency of the government and who in the opinion of the Ombudsman is able to give any information relating to any matter being investigated by him;

(b) any complainant; and

(c) any other person who in the opinion of the Ombudsman is able to give any information relating to any matter being investigated by him;

and for that purpose may administer an oath.

(3) Every examination by the Ombudsman under subsection (2) shall be deemed a judicial proceeding for the purposes of section 120 of the *Criminal Code*.

(4) Subject to section 23:

(a) a rule of law that authorizes or requires the withholding of any document, paper or thing or the refusal to answer any question on the ground that the disclosure or answer would be injurious to the public interest does not apply in respect of any investigation by or proceedings before the Ombudsman;

(b) no provision of an Act requiring a person to maintain secrecy in relation to, or not to disclose information relating to, any matter shall apply in respect of an investigation by the Ombudsman and no person who is required by the Ombudsman to furnish any information or to produce any document, paper or thing or who is summoned by the Ombudsman to give evidence, shall refuse to furnish the information, produce the document, paper or thing or to answer questions on the ground of such a provision.

(5) Except on the trial of a person for perjury, no statement made by the person or any other person in the course of an investigation by, or any proceedings before, the Ombudsman is admissible in evidence against any person in any court, at any inquiry or in any other proceedings and no evidence in respect of proceedings before the Ombudsman shall be given against any person.

(6) No person shall be prosecuted for an offence against any Act by reason of his compliance with any requirement of the Ombudsman under this section. 1972, c.87, s.22.

Disclosure restricted

23 Where the Attorney General certifies to the Ombudsman that the giving of any information, the answering of any question or the production of any document, paper or writing might involve the disclosure of:

(a) the deliberations of the Executive Council; or

(b) proceedings of the Executive Council or a committee of the Executive Council relating to matters of a secret or confidential nature the disclosure of which would be injurious to the public interest;

the Ombudsman shall not require the information or answer to be given or the document, paper or writing to be produced, as the case may be, but shall report the receipt of the certificate in his next annual report. 1972, c.87, s.23.

Report on investigation

24(1) Where, after making an investigation under this Act, the Ombudsman is of the opinion:

(a) that a decision, recommendation, act or omission that is the subject matter of the investigation appears to have been:

(i) contrary to law;

(ii) unreasonable, unjust, oppressive, improperly discriminatory or was in accordance with a rule of law, a provision of an Act, or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory;

(iii) based in whole or in part on a mistake of law or fact; or

(iv) wrong;

(b) that in making a decision or recommendation, or in doing or omitting an act, a power or right has been exercised:

(i) for an improper purpose;

(ii) on irrelevant grounds; or

(iii) on the taking into account of irrelevant considerations; or

(*c*) that reasons should have been given for a decision, recommendation, act or omission that was the subject matter of the investigation;

the Ombudsman shall report his opinion and his reasons therefor to the appropriate minister and to the department or agency of the government concerned and may make such recommendations as he thinks fit.

(2) Without limiting the generality of subsection (1), in making a report under that subsection the Ombudsman may recommend:

(*a*) that a matter should be referred to the appropriate authority for further consideration;

(*b*) that an omission should be rectified;

(*c*) that a decision should be cancelled or varied;

(*d*) that any practice on which a decision, recommendation, act or omission was based should be altered or reviewed;

(*e*) that any law on which a decision, recommendation, act or omission was based should be reconsidered;

(*f*) that reasons should be given for any decision, recommendation, act or omission; or

(*g*) that any other steps should be taken.

(3) This section does not apply to an investigation or report required to be made under subsection (3) or (4) of section 12. 1972, c. 87, s. 24.

Notice of proposed steps

25.—(1) Where the Ombudsman makes a recommendation under section 24, he may request the department or agency of the government to notify him within a specified time of the steps that it has taken or proposed to take to give effect to his recommendations.

(2) If, within a reasonable time after a request respecting recommendations is made under this section, no action is taken that seems to the Ombudsman to be adequate or appropriate the Ombudsman after considering the comments, if any, made by or on behalf of the department or agency of the government affected may submit a report of the matter, including a copy of the report containing the recommendation, to the Lieutenant Governor in Council and may thereafter mention the report in his next annual report to the Assembly. 1972, c. 87, s. 25.

Review of Ombudsman's decision

26.—(1) Where the Ombudsman makes a recommendation under section 24 and no action that seems to the Ombudsman to be adequate and appropriate is taken thereon within a reasonable time, the Ombudsman shall inform the complainant of his recommendation and make such comments on the matter as he thinks fit.

(2) The Ombudsman shall in any event inform the complainant, in such manner and at such time as he thinks proper, of the result of the investigation. 1972, c. 87, s. 26.

Proceedings not subject to review

27. No proceeding of the Ombudsman is invalid for want of form and, except on the ground of lack of jurisdiction, no proceeding or decision of the Ombudsman shall be challenged, reviewed, quashed or called into question in any court. 1972, c. 87, s. 27.

Proceedings against Ombudsman prohibited

28.—(1) No proceedings lie against the Ombudsman or against any member of his staff for anything he may do, report or say in the course of the exercise or performance, or intended exercise or performance, of his powers, duties and functions under this Act unless it is shown that he acted in bad faith.

(2) Neither the Ombudsman nor any member of his staff shall be called in any court or in any proceedings of a judicial nature in respect of anything coming to his knowledge in the exercise or performance of his powers, duties and functions under this Act.

(3) Anything said or any information supplied or any document, paper or thing produced by any person in the court relating to an investigation by or proceedings before the Ombudsman under this Act is privileged in the same manner as if the investigation or proceedings were proceedings in a court.

(4) For the purposes of *The Libel and Slander Act*, any report made by the Ombudsman under this Act shall be deemed to be privileged and a fair and accurate report thereon in a newspaper or a braodcast shall be deemed to be privileged. 1972, c. 87, s. 28; 1976-77, c. 81, s. 5.

Entry of premises

29.—(1) For the purposes of this Act, the Ombudsman may at any time enter upon the premises occupied by any department or agency of the government and, subject to section 12, carry out therein any investigation within his jurisdiction.

(2) Before entering upon any premises under subsection (1), the Ombudsman shall notify the deputy minister or administrative head of the department or agency of the government that occupies the premises of his intention to conduct an investigation. 1972, c. 87, s. 29.

Report by Ombudsman

30.—(1) The Ombudsman shall make and submit to the Speaker of the Assembly an annual report respecting the exercise of his powers and the performance of his duties and functions under this Act, which shall be laid before the Assembly within fifteen days from the commencement of the session next following the end of the year for which the report is made.

(2) The Ombudsman may from time to time in the public interest or in the interest of any person, department or agency of the government publish reports relating:

(*a*) generally to the exercise of his powers and the performance of his duties and functions under this Act; or

(*b*) to any particular case investigated by him;

whether or not the matters to be dealt with in any such report have been the subject of a report to the Assembly. 1972, c. 87, s. 30.

Rules for guidance

31.—(1) The Assembly may:

(*a*) of its own volition; or

(*b*) upon the recommendation of the Lieutenant Governor in Council;

make rules for the guidance of the Ombudsman in the exercise of his powers and performance of his duties and functions.

(2) Subject to this Act and any rules made under subsection (1), the Ombudsman may determine his procedure and the procedure for the members of his staff in the exercise of the powers conferred and the performance of the duties and functions imposed by this Act. 1972, c. 87, s. 31.

Offences and penalties

32. Any person who:

(*a*) without lawful justification or excuse wilfully obstructs, hinders or resists the Ombudsman or any other person in the exercise or performance of his powers, duties and functions under this Act;

(*b*) without lawful justification or excuse, refuses or wilfully fails to comply with any lawful requirement of the Ombudsman or any other person under this Act; or

(*c*) wilfully makes any false statement to or misleads or attempts to mislead the Ombudsman or any other person in the exercise or performance of his powers, duties and functions under this Act;

is guilty of an offence and liable on summary conviction to a fine not exceeding $500 or to imprisonment for a term not exceeding three months or to both fine and imprisonment. 1972, c. 87, s. 32.

Attorney General may intervene

33. The Attorney General or counsel appointed by him for the purpose may at any time, without leave of the court or judge, intervene in any action or proceedings taken in any court under section 27 or 28 and no order for costs for or against the Attorney General shall be made as a result of the intervention. 1972, c. 87, s. 33.

Act to provide additional remedies

34. The provisions of this Act are in addition to the provisions of any other Act or rule of law under which any remedy, right of appeal or objection is provided for any person, or any procedure is provided for inquiry into or investigation of any matter and nothing in this Act limits or affects any such remedy, right of appeal, objection or procedure. 1972, c. 87, s. 34.